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**(2001) 03 DEL CK 0102**

**In the Delhi High Court**

**Case No :** C.W.No. 5796 of 1999 and C.M.No. 10536 of 1999

Lt. Col. B.S. Dhanda

APPELLANT

Vs

Union of India and others

RESPONDENT

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**Date of Decision :** 02-03-2001

**Acts Referred:**

Constitution of India, 1950 — Article 21, 47

**Citation :** (2001) 03 DEL CK 0102

**Hon'ble Judges :** Dr. M.K. Sharma, J

**Bench :** Single Bench

**Advocate :** Mr. N.L. Bareja, for the Appellant; Mr. Amit Andley, for the Respondent

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## **Judgement**

Dr. Mukundakam Sharma, J.—The petitioner while serving in the Army suffered a chest pain/Angina on October 21, 1994 which on medical examination was diagnosed to be a case of Ischemic heart disease. After the condition of the petitioner became stable, the petitioner was sent to Command Hospital, Pune, for examination and opinion of the Cardiologist, who after conducting various clinical tests endorsed his opinion on the case sheet. On the basis of such report, the petitioner was placed in Low Medical Category temporarily and recommended six weeks sick leave. After completion of the sick leave, the petitioner was re-admitted to his place of posting, that is, MH Belgam for re-classification of the medical category, wherein he was again placed in Low Medical Category temporarily. Even thereafter, the petitioner was again examined and was sent for advice by consultant in Cardiology in AFC. The petitioner after he was examined was advised to undergo coronary Angiography and further specialised medical treatment in Escorts Institute, if considered necessary.

2. The petitioner submitted an application in accordance with the existing procedure and on the basis of the said application, the Director General of Medical Services (Army) recommended sanction of a loan of Rs.1,50,000/- vide sanction letter dated August 30, 1995, which loan amount was credited into the

account of Army Hospital for onward payment to Escorts Institute. The petitioner thereafter underwent Angiography and in consequence there of also underwent Angioplasty at Escorts Heart Institute. After the said treatment, a bill of Rs. 1,608,065/- was given to the petitioner for payment. An additional amount of Rs.18,065/- was also advanced as load against the petitioner's application and the said amount was transmitted to Army Hospital for onward payment to the Escorts Heart Institute. Accordingly, the entire bill pertaining to specialised medical treatment of the petitioner was cleared by the Army Hospital on behalf of the petitioner.

3. Consequent thereto, the petitioner put up a claim for reimbursement of the entire expenditure amounting to Rs.1,68,065/-. However, on November 20,1996, the petitioner was informed that he would be entitled only to a claim of Rs.99,500/- and that the balance amount of Rs.68,565/- was disallowed directing the petitioner to refund the said amount. Being aggrieved by the same, the petitioner submitted a statutory complaint for consideration of the respondent No.1, but the said complaint was rejected and, Therefore, the present petition was preferred in this Court by the petitioner seeking for quashing of the orders dated November 16, 1998 and December 16, 1998 issued by the respondents, with a further direction to the respondents to reimburse the entire claim preferred by the petitioner and also to sanction reimbursement of the balance amount of Rs.68,565/- which is being claimed by the respondent from the petitioner.

4. The respondent entered appearance and filed a counter affidavit contending, inter alia, that the petitioner under the extent Rules had the choice to select one of the Civil Hospitals" listed in the Government of India letter dated March 28, 1988 for availing specialised treatment from Civil Hospitals" listed at Serial Nos. (i) to (ix) where the entire cost was reimbursable. It was further stated that in those hospitals which are mentioned at Serial Nos. (x) to (xiii) of the said list, the petitioner was only entitled to get reimbursement at CGHS rates. It was stated that the petitioner with full knowledge of the reimbursable limit, as stated in the said letter dated March 28, 1988, not only selected the Escorts Heart Institute and Medical Centre, listed at Serial No. (xiii), which comes in the letter category, where only CGHS rates are reimbursable but, also gave an undertaking that the cost over and above the reimbursable amount would be borne by him in respect of the hospital selected by him.

5. Counsel appearing for the petitioner states that since the consultant in Cardiology in AFC had gives ad advice to the petitioner to undergo coronary Angiography and also for further specialised medical treatment in Escorts Heart Institute, if considered necessary, Therefore, the entire amount incurred by the petitioner in undertaking the said treatment at Escorts Heart Institute is reimbursable and, Therefore, the demand made for recovery of Rs.68,565/- is illegal and without jurisdiction. It was also submitted that the right to health is an integral part of life and that the respondents have a constitutional obligation

to provide the health facilities to its employees, particularly, when the petitioner suffered the disease while working in the Army. Therefore, when the petitioner requires a specialised treatment in an approved hospital, it is the duty of the Government to bear or reimburse all the expenses.

6. Counsel appearing for the respondents, however, relied upon the contents of the Government of India letter dated March 28, 1988 and submitted that the petitioner being conscious and fully aware of the aforesaid position opted for getting the treatment from Escorts Heart Institute and get the medical treatment in the said hospital after giving an undertaking that the cost over and above the reimbursable amount would be borne by him in respect of the hospital selected by him and, Therefore, he is estopped from claiming total reimbursement of the medical expenditure.

7. A copy of the aforesaid Government of India letter dated March 28, 1988 is placed on record. The contents of the said Memorandum is applicable to the army personnel and their family members in respect of the specialised treatment received by them from Civil hospitals. According to the said letter ,specialised treatment received by the army personnel and their family members in hospitals named at Serial Nos. (i) to (ix) would be considered for treatment from Civil Hospitals and those hospitals which are listed from Serial Nos. (x) to (xiii) would be the same as approved by the Ministry of Health and Family Welfare for CGHS beneficiaries. Paragraph 2 thereof provides that service personnel requiring Coronary By-pass Surgery and allied investigations for which requisite facilities are not available from the service sources could be transferred for treatment at one of the aforesaid 13 hospitals as in-patient on the authority of Director General of Medical Services concerned. Paragraph 4 provides that the bills for treatment in these hospitals would be paid by the Controller of defense Accounts concerned but, at the rate as mentioned in the note appended thereto. Relevant portions thereof are extracted below:-

"..... Note: The terms and conditions and the rates for the Coronary By-Pass Surgery and allied investigations thereto at the Hospitals listed at No. (x), (xi), (xii) & (xiii) above will be the same as approved by the Ministry of Health and Family Welfare for CGHS beneficiaries.

b) Kidney i) Post Graduate Institute transplantation of Medical Education & Research, Chandigarh. ii) A.I.I.M.S., New Delhi. iii) Christian Medical College, Vellore (Tamil Nadu). iv) Jaslok Hospital & Medical Research Centre, Bombay. v) The Apollo Hospital, Madras. 2. Accordingly, in partial modification, of para 203 of RMSAF-62 Service personnel requiring above mentioned treatment for which requisite facilities are not available from service sources may be transferred for treatment at one of the above mentioned hospital as in-patient on the authority of Director General of Medical Services concerned as entitled patients. Ex-post-facto sanction, will, however, be obtained in serious cases if immediate treatment is required as a life saving measure, where it may not be

possible to obtain prior approval of the DGMS concerned.

3. .... 4. The bills for treatments in these hospitals will be paid by the Controller of defense Accounts concerned after these have been verified and countersigned by the Director General of Medical Services concerned. Necessary action for making recoveries of hospital stoppages from the officers, JCOs and ORs and their equivalents in the Navy and Air Force and their families will be taken in accordance with para 55(ii) of Financial Regulations (India) Part-II read with para 293 and para 5,7 & 30 of Appendix-5 of RMSAF-1962. Recoveries from families of JCOs and ORs and their equivalents in the Navy & Air Force will be as for the head of the family."

8. The respondents have also placed on record the undertaking given by the petitioner. In the undertaking given by the petitioner, the petitioner acknowledged receipts of the amount of Rs.1,68,065/- in favor of Escorts Heart Institute towards payment of his Angiography, paid by him, undertaking therein that he had been explained by Army Hospitals that the amount payable by the Government to him for the investigation operation procedure would be the maximum permissible for CGHS beneficiaries. The petitioner also undertook that he is selecting Escorts Heart Institute for his investigation/treatment of his own volition and any excess of permissible limit would be borne by him and that he would be responsible for the refund of the loan. The said undertaking given by the petitioner is dated October 4, 1995.

9. The petitioner under the Government of India letter dated March 28, 1998 could have received treatment in any of the hospitals like, Post Graduate Institute of Medical Education & Research, Chandigarh, A.I.I.M.S., New Delhi, Christian Medical College, Vellore (Tamil Nadu), Jaslok Hospital & Medical Research Centre, Bombay or the Apollo Hospital, Madras, for the same kind of treatment, for which the entire amount would have been reimbursed, provided the petitioner had received the treatment in any of the aforesaid hospitals. The petitioner, however, preferred to receive treatment for his ailment at the Escorts Heart Institute and Research Centre, which was a hospital of his choice. In order to enable him to obtain treatment in the said hospital, the petitioner had given the aforesaid undertaking clearly stipulating that he has selected Escorts Heart Institute for his investigation/treatment of his own volition and that the excess of the permissible limit would be borne by him. He was also aware of the contents of the aforesaid memorandum as mentioned in paragraph 2(a) of the undertakings.

10. In this connection, reference may be made to the decision of the Supreme Court in State of Punjab & Ors. Vs. Ram Lubhaya Bagga etc. ; reported in 1988 2 AD (S.C.) 449 wherein, it is held that provision of medical facilities cannot be unlimited and that it has to be to the extent finance permits. It was further held that if no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, that state would be bound to reimburse the same. It was further held by the Supreme Court that principles of fixation of rate and

scale under the policy is justified and cannot be held to be violative of Article 21 of Article 47 of the Constitution of India. It was also held that the Court would not generally interfere with any opinion formed by the Government, if it is based on relevant facts and circumstances or based on expert advice. It was further held that after the introduction of a new policy, the extent of medical reimbursement can only be according to the rates prescribed by A.I.I.M.S., and directed that the respondents are entitled to reimburse only at A.I.I.M.S., rate.

11. Counsel appearing for the petitioner relied upon the decision in *Narendra Pal Singh Vs. Union of India and Others*, . The said decision was rendered on the basis of the decision of the Supreme Court in *State of Punjab and others Vs. Mohinder Singh Chawla, etc.*, . In the case of *Ram Lubhaya Bagga etc. (supra)*, the aforesaid decision of *Mahinder Singh Chawla (supra)* was noticed by the Supreme Court and thereafter, the said decision was rendered. The decision in *Ram Lubhaya Bagga etc. (supra)* is also by a larger bench and, Therefore, I am bound by the said decision of the Supreme Court. The policy applicable in the present case is also different from the policy which was considered in the case of *Narendra Pal Singh (supra)*.

12. The petitioner was fully aware of the conditions of receiving treatment at Escorts Heart Institute and also chose the hospital of his own volition and undertook to pay the balance amount. In terms thereof, particularly in view of the aforesaid letter of the Government of India dated March 28, 1988, and also in view of his undertaking, the principles of estoppel is applicable against the petitioner. Therefore, it is held that the extent of medical reimbursement to the petitioner could be only according to the rates prescribed by the CGHS and, Therefore, the petitioner shall not be entitled to receive the full amount that was incurred by him towards his treatment at Escorts Heart Institute.

13. In terms of the aforesaid order, the writ petition is disposed of. Pending application stands disposed of accordingly.