

(2017) 03 AHC CK 0074
In the Allahabad High Court
Case No : Service Bench No. 1645 of 2015

Ram Swaroop Jaggi

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 07-03-2017

Acts Referred:

Citation : (2017) 4 ADJ 679

Hon'ble Judges : Sudhir Agarwal and Ravindra Nath Mishra-II, JJ.

Bench : Division Bench

Advocate : Dr. Vijay Kumar Singh, Smt. Manisha Singh, Advocates, for the Petitioner; Jyotsna Pal, Ajay Kumar Singh and Pankaj Srivastava, Advocates, for the Respondent

Final Decision : Partly Allowed

Judgement

1. This writ petition has been filed against the judgment and order dated 03.03.2015 passed by Central Administrative Tribunal (hereinafter referred to as the "CAT") Lucknow Bench, Lucknow in Original Application No. 332/00447/2014 dismissing claim of the applicant petitioner and also order dated 18.09.2015 rejecting petitioner's review application.

2. The dispute relates to medical reimbursement. Petitioner has undergone treatment at Vivekananda Polyclinic & Institute of medical Sciences Hospital. According to respondent the above hospital is not recognised authorised hospital, therefore, the expense incurred therein are not to be paid as such and same have been rejected.

3. However, we find from record that medical treatment undergone by petitioner is not in dispute. The actual dispute is that petitioner has undergone treatment in private hospital and according to respondents, expenses at the higher rates of private hospital can not be reimbursed, as such.

4. The issue of reimbursement of medical expenses has been found connected with fundamental right to life and liberty under Article 21 of the Constitution and

directive principles enshrined under Article 47. A three-Judge Bench in *State of Punjab & Ors. v. Ram Lubhaya Bagga*, JT 1998(2) SC 136, observed:

"the State can neither urge nor say that it has no obligation to provide medical facility. If that were so it would be *ex facie* violative of Article 21."

5. Court also observed that right of a citizen to live under Article 21 casts obligation on the State, which is further reinforced under Article 47 since it is for the State to secure health to its citizens its primary duty.

6. This is one aspect of the matter. But then it is also true that State has no unlimited resources to spent on any of its particular objects or projects. Therefore, if the provisions are made to provide such medical facilities keeping in view the limits of finances, such provisions, *per se*, cannot be said to be bad. Recognizing this fact, a Constitution Bench in *Confederation of Ex-Servicemen Association & Ors. v. Union of India & Ors.*, 2006(8) SCC 399, said:

"In our considered opinion, though the right to medical aid is a fundamental right of all citizens including ex-servicemen guaranteed by Article 21 of the Constitution, framing of scheme of ex-servicemen and asking them to pay "one time contribution" neither violates Part III nor it is inconsistent with Part IV of the Constitution."

7. Following the above two authorities in *State of Karnataka and Anr. v. Sri R. Vivekananda Swamy*, (2008) 5 SCC 328, Court said :

"24. In view of the aforementioned settled principles of law there cannot be any doubt that the Rules regarding reimbursement of medical claim of an employee when he obtains treatment from a hospital of his choice can be made limited. Such a rule furthermore having been framed under the proviso to Article 309 of the Constitution of India constitutes conditions of service in terms whereof on the one hand the employee would be granted the facility of medical aid free of cost from the recognised government hospitals and on the other he, at his option, may get himself treated from other recognised hospitals/institutions subject of course to the conditions that the reimbursement by the State therefore would be limited."

"29.we are of the opinion, that having laid down the law for the future that claim for reimbursement must be made only in terms of the Rules and not *dehors* the same.."

8. To sum up, it can be said that reimbursement of medical expenses incurred by a Government servant partakes the nature of a Constitutional as well as legal right, which has lifted up to the level of fundamental right under Article 21, but with respect to the amount/quantum thereof, employer or the State can make provisions to regulate the same. In other words, an employee cannot have an absolute right to claim reimbursement of any amount, may be extravagant or which normally one may not incur if undergo the same medical treatment in a medical establishment run by State with due expertise and desired facilities. In

the matter of rates of quantum of medical reimbursement, a regulatory provision can be made by State Government and unless such provisions are shown to be prima facie irrational, they have to be honoured and implemented. Therefore, a Government servant cannot be denied reimbursement of expenses incurred on medical treatment outright in its entirety but what amount shall be reimbursed, that can be controlled by making provisions governing his conditions of service, which will obviously have to be rational, reasonable i.e. not arbitrary. If any provision is made, which deny reimbursement in its entirety, though actual medical treatment undergone by Government servant or his family member is not found to be ingenuine or bogus, such an action of employer would be illegal. However, the employer can say that the employee may avail medical facilities in a medical establishment of any status whatsoever but expenses, which shall be reimbursed to him, would not exceed particular level or rate, normally, which are at par with similar kind of medical established or maintained by State itself and such provisions if made, have to be applied unless something is shown therein to be ex facie irrational or arbitrary.

9. Once the actual medical treatment undertaken by employee is not in dispute and the provision of medical reimbursement are there in condition of service, the same cannot be rejected out rightly. In our view the employer may not reimburse the entire expenses as claimed by employee to have incurred in private hospital but corresponding expenses at the rates in hospitals recognised by employer must have been paid, when the actual treatment undergone is not in dispute. We, therefore, allow this writ petition partly and modify judgment of Tribunal and direct respondents to examine medical claim of petitioner and compute the amount of reimbursement as per the rates prevailing at the relevant time in the recognised hospital of railway and pay such amount to the petitioner within three months.

10. The writ petition partly allowed.