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**(2014) 07 P&H CK 0434**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : CWP No. 12159 of 1996**

S.S. Walia

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision :** 24-07-2014

**Acts Referred:**

Constitution of India, 1950 — Article 309

**Citation :** (2014) 07 P&H CK 0434

**Hon'ble Judges :** Rameshwar Singh Malik, J

**Bench :** Single Bench

**Advocate :** R.S. Dadwal, Advocate for R.K. Sharma, Advocate for the Appellant;  
I.P. Goyat, Addl. A.G, Advocate for the Respondent

**Final Decision :** Allowed

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## Judgement

Rameshwar Singh Malik, J.—Petitioner impugns the order dated 17.1.1996 (Annexure P-5), whereby the amount of Rs. 1,16,000/- recommended by the Director, Health and Family Welfare, Punjab, on the basis of recommendations of Medical Board, vide communication dated 29.9.1992, Annexure P-1(A), was reduced to Rs. 74,500/- without recording any reason for the deduction. Petitioner also seeks a direction against the respondent authorities to release the OPD medical reimbursement against the bills submitted for the period from 7.4.1995 to 18.7.1996, as per sanction already granted for the period 7.4.1995 to 10.11.1995 and 8.2.1996 to 9.3.1996 but payment thereof was not released.

2. Notice of motion was issued and pursuant thereto, written statement was filed on behalf of respondents. During the pendency of the writ petition, interim direction was issued by this Court vide order dated 19.3.1998 directing the respondent authorities to re-examine the case of the petitioner. The claim of the matter was re-examined but the respondent authorities stick to their earlier stand, while passing the order dated 23.4.1998 attached with additional affidavit dated 5.5.1998. Finally, writ petition was admitted for regular hearing. That is how, this Court is seized of the matter.

3. During the pendency of the writ petition, petitioner died and his legal representatives were brought on record.

4. Learned counsel for the petitioner places heavy reliance on communication dated 29.9.1992 Annexure P-1(A) to contend that once the claim of the petitioner was considered by the Medical Board, respondent No. 1 had no authority to cause further deduction reducing the amount from Rs. 1,16,000 to Rs. 74,500/- vide impugned order dated 17.1.1996 (Annexure P-5). He further submits that the impugned order was non-speaking and cryptic one, because no reason was assigned by respondent No. 1, while passing the impugned order. In support of his submissions, learned counsel for the petitioner relies on a Division Bench judgment of this Court in K.L. Kohli v. State of Punjab and others, 199(4) SCT 280. Finally, he prays for setting aside the impugned order, while allowing the writ petition.

5. Per contra, learned counsel for the State submits that petitioner did not make even an attempt to seek requisite permission from the competent authority, before getting the medical treatment from the hospital, treatment from which was not reimbursable as per the government instructions. He further submits that matter was re-considered but the petitioner was not found entitled for any more amount beyond Rs. 74,500/- which had already been released in his favour. He would further contend that whatever amount was found due in favour of the petitioner, as per the relevant provisions of law and instructions of the State Government, the same was released in his favour and the petitioner was not entitled for any other extra amount. Finally, he prays for dismissal of the writ petition.

6. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the case in hand, the writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

7. It is a matter of record and not in dispute that after carefully examining the claim of the petitioner, Medical Board, an expert body on the subject, found the petitioner entitled for an amount of Rs. 1,16,000/-. Every aspect of the matter was discussed by the Medical Board. Thereafter, rightly accepting the recommendation of the Medical Board, Director, Health and Family Welfare Department-respondent No. 2 issued a communication dated 29.9.1992 Annexure P-1 (A) addressing the same to respondent No. 1 for releasing the amount in favour of the petitioner. This official communication Annexure P-1(A) has not been disowned by the respondent-Department in the written statement as well as in the additional affidavits filed later. It is neither pleaded nor argued case on behalf of the respondent-State that recommendation made by the Medical Board was either factually incorrect or contrary to the relevant provisions of law or instructions issued by the State Government. Once it is so, respondent No. 1 not being an expert over and above the Medical Board, has no authority to

reduce the amount from Rs. 1,16,000/- as recommended by the Medical Board, to Rs. 74,500/- by way of impugned order dated 17.1.1995 (Annexure P-5) Having said that, this Court feels no hesitation to conclude that impugned order was non-speaking and cryptic one because respondent No. 1 has failed to assign any reason much less cogent reasons, while passing the impugned order. Thus, the impugned order cannot be sustained. The relevant observations made by the Medical Board communicated by respondent No. 2 vide Annexure P-1(A), read as under:-

Therefore, his case was examined by the Medical Board and after examining the medical board found that Dr. S.S. Walia was suffering from this fatal disease but he did not get full references. Therefore, the expenses on the treatment got in India be reimbursed at the rates permissible in PGI/All India Institute of Medical Sciences, New Delhi, in which the treatment got at Bombay and Madras is included. The reimbursement of the expenses of treatment got at America be made at the rates permissible in PGI/All India Institute of Medical Sciences, whichever is higher. The expenses on travelling be given according to the rules.

Keeping in view all this and according to the list attached, instead of amount of Rs. 9,50,971.70, Rs. 1,16,000/- is calculated as per the recommendation of the Medical Board. The list is attached.

Keeping above in view, orders for sanction be passed. The medical bills of the employee and required documents are attached.

8. It is also not in dispute that respondent No. 1 has not recorded his dissatisfaction on the recommendations made by the Medical Board and constituted another Medical Board for reconsideration of the matter. In the absence of any exercise having been taken, expert opinion rendered by the Medical Board, arriving at a definite conclusion finding the petitioner entitled for Rs. 1,16,000/-, ought to have been accepted as it is by respondent No. 1. However, respondent No. 1 failed to do so without recording any reasons, whatsoever. In this view of the matter, the impugned order cannot be sustained and the same is liable to be set aside.

9. Coming to the pleadings of the parties, petitioner has taken specific averments in paras 9 to 12 with a specific reference to the above-said communication dated 29.9.1992 Annexure P-1(A). While replying these paragraphs, respondents have admitted all the averments taken by the petitioner right from paras 7 to 13 repeating the word "admitted" in reply to every paragraph. Thereafter, although the respondents have tried to improve their case in the additional affidavits filed, yet the significant averments taken by the petitioner in paras 9 to 13 and particularly the recommendations of the Medical Board have not been refuted by the respondents. Thus, as per the pleadings of the parties, case of the petitioner has been virtually admitted, because correctness of the recommendations of the Medical Board have not been disputed. Thus, the impugned order cannot be sustained, for this reason as well.

10. The view taken by this Court also finds support from the Division Bench judgment of this Court in K.L. Kohli's case (supra) The relevant observations made by the Division Bench in paras 8 to 10 of the judgment, which can be gainfully followed in the present case, read as under:-

Regarding the treatment which the petitioner has taken at private hospital i.e. Escorts Heart Institute and Research Centre, New Delhi, it has been alleged by the petitioner that according to the policy of the Government, the said Institute at New Delhi is duly recognised for treatment of heart diseases for the employees, pensioners, and their dependents in the State of Punjab. In the written statement, this contention is admitted by the respondents but it is contended that the treatment from the hospital/institution outside the State can only be got with the prior permission of the Medical Board constituted for the purpose. The learned counsel for the petitioner drew our attention to an earlier decision of a Division Bench in case of Sadhu R. Pall v. State of Punjab and Ors., 1994 (1) SCT 552 (P & H) C.W.P. No. 13493 of 1992, in which it has been held by the Division Bench that "we cannot restrain ourselves from observing that respondent's plea is not only unsustainable but is totally bereft of any plausible reason. The plea does not merit consideration in view of the admitted fact to the effect that Escorts Heart Institute & Research Centre, New Delhi was duly recognised for treatment of heart problems." Therefore, it is clear that the petitioner was entitled to be reimbursed for the treatment he received at the Escorts Heart Institute and Research Centre, New Delhi if the prior permission of the Medical Board constituted for this purpose was obtained. Therefore, the first point in this case has to be answered in affirmative.

This takes us to the consideration of the second point i.e. whether the petitioner could be granted ex-post facto permission or not. The treatment which a Government servant is required to take in these types of cases differs from the ordinary treatment which is required to be taken when there is no emergency. The time will wait for no one and if the petitioner had delayed the treatment which he needed for the completion of formalities of the prior permission of the Medical Board, there was possibility that he would not have survived, for receiving such treatment. In the case of Dr. Prem Nath Garg v. State of Punjab and others, C.W.P. 16145 of 1992, the petitioner was required to go abroad for double heart surgery. The Government initially did not grant him permission to go abroad for the same and it was only when he had given in writing that he would not claim medical reimbursement, that the Government revised its decision and granted the necessary permission. The contention raised by the Government in that case was that this amounted to estoppel on the part of the petitioner and even if reimbursement might be permissible under the rules and regulations, the petitioner was not entitled to the same. The Division Bench of this court observed in that case that "if the medical reimbursement rules, which are statutory in nature, and having been made under Article 309 of the Constitution, permit the petitioner to claim medical reimbursement, the mere fact that the petitioner had given in writing for the purpose of seeking permission

to go abroad, that he would not claim reimbursement, would not amount to estoppel on this part, as there is no estoppel against a statute. Otherwise also, in a welfare State, governed by the rule of law, to deny a just and genuine claim of a Government servant does not bring any credit to the State." Therefore, in that case the petitioner had gone abroad after giving in writing as aforesaid but the Division Bench of this Court has held that the said petitioner was entitled to get the expenses reimbursed. The case of the present petition stands on a better footing because he has not given in writing as the petitioner in the case of DR. Prem Nath Garg (Supra) had.

Here in the present case, the Escorts Heart Institute and Research Centre, New Delhi was recognised and except that the prior approval of the Medical Board was not obtained, there remains no other defence to the Government. It would be harsh, cruel and inhuman to ask a person, facing death ahead, to wait for the procedural formalities of the Government. In view of these circumstances, we find that rejection of the claim of the petitioner for want of prior permission of the Medical Board was not justified.

11. A careful perusal of the abovesaid observations would show that every possible objection raised by the respondents in the present case has been repelled by the Division Bench. In fact, except raising technicalities, respondents had nothing to say on the substantive aspect of the matter.

12. Reverting back to the facts of the present case and respectfully following the law laid down by the Division Bench of this Court in K.L. Kohli's (supra), it is unhesitatingly held that petitioner was having a genuine claim and was entitled for the medical reimbursement to the extent of Rs. 1,16,000/- as recommended by the Medical Board.

13. No other argument was raised.

14. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present writ petition deserves to be allowed. The impugned order dated 17.1.1996 (Annexure P-5) as well as order dated 23.4.1998 passed by respondent No. 1, have been found patently illegal and the same are declared as such. The writ petition is allowed and the impugned orders are hereby set aside.

15. Since learned counsel for the parties have not been instructed on the latest status, qua prayer no. 3 regarding release of amount on account of OPD medical reimbursement, against the bills submitted for the period from 7.4.1995 to 18.7.1996 despite the sanction having been granted by the competent authority, it would suffice to say that if the amount found due in favour of the petitioner on account of OPD medical reimbursement, against the bills submitted for the period from 7.4.1995 to 18.7.1996 has not been released so far, the same shall also be released in favour of the petitioner. The legal representatives of the petitioner will also be entitled for interest on the unpaid amount and the respondents are directed to pay the same to the petitioner along with interest @

12% per annum. Let needful be done within a period of three months from the date of receipt of a certified copy of this order.

16. With the observations made and directions issued hereinabove, the instant writ petition stands allowed, however, with no order as to costs.