

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**WP(C) No. 2103/2023
Caveat No. 1080/2023**

Date of order: 16.08.2023

- 1. Union Territory of J&K through
Commissioner Secretary to Govt.,
Home Department, J&K, Srinagar.**
- 2. Director General of Police, J&K, Srinagar.**
- 3. Commandant IRP-15th Bn. Jammu
(Indian Reserve Police), Gulshan Ground,
Gandhi Nagar, Jammu.**

.....Petitioner(s)

Through: Mrs. Monika Kohli, Sr. AAG.

Vs

**Smt. Reeta Dhar, Age 53 years,
Widow of Late Kuldeep Dhar,
R/o H. No. 79, Gole Sharika
Nagar, Near Peer Baba Sunder
Nagar, Talab Tillo, Jammu.**

..... Respondent(s)

Through: Mr. H. L. Koul, Advocate for the
caveator/respondent.

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

**JUDGMENT
16.08.2023**

Per: Rahul Bharti-J

01. This writ petition bears an issue as to whether the government and its authorities should have a ritualistic or a

realistic mindset in the matter of medical reimbursement claims of a government employee suffering from life threatening ailment.

02. The respondent's husband – Kuldeep Dhar was a government employee serving as Pharmacist/Medical Assistant in the J&K Police Department who came to be diagnosed as suffering from lung cancer which resulted in his initial treatment in the Police Hospital, Jammu, then in the Govt. Medical College, Jammu, followed by treatment in Chest Diseases Hospital, Jammu and finally referred to PGI, Chandigarh. The respondent's husband's life came to be consumed by the lung cancer ailment as he came to breath his last on 13.08.2018 while in a state of hospitalization in Mumbai.

03. In the treatment of her husband, it is claimed by the respondent that an amount of Rs. 19,00,000/- (nineteen lacs) was incurred. The respondent came to register an immediate claim for reimbursement of an amount of Rs. 3,21,545/- in relation to the medical expenses attending the treatment of her husband. This claim was registered by the respondent with the Commandant, IRP-15th Bn, Jammu, the establishment in which the respondent's husband was posted.

04. Commandant, IRP-15th Bn, Jammu came to pass an Order no. Acctt/IR-15th/19/11978 dated 18.07.2019 qua the claim of reimbursement of an amount of Rs. 3,21,545/-, when an amount of

Rs. 61,302/- came to be reimbursed whereas rest of the amount of Rs. 2,60,243/- was not entertained by the Commandant, IRP-15th Bn, Jammu on the pretext that the said amount pertains to the medical expenses incurred prior to the issuance of “Life Consuming Disease Certificate” issued in favour of the respondent’s husband and further that the said expenses were incurred in connection with the treatment of the respondent’s husband in a private hospital in Mumbai for which there was no referral from the Govt. Chest Diseases Hospital, Jammu.

05. Suffering the denial of said reimbursement for an amount of Rs. 2,60,243/- at the end of the Commandant, IRP-15th Bn, Jammu, the respondent came to approach this Court with a writ petition being WP(C) no. 3322/2019 thereby seeking to declare Order no. Acctt/IR-15th/19/11978 dated 18.07.2019 passed by the Commandant, IRP-15th Bn, Jammu to the extent of rejecting medical reimbursement claim of the respondent qua her husband as illegal and in violation of Medical-cum-Allowance Rules of 1990 (in short **“Rules of 1990”**). This writ petition came to be answered by the writ respondents which included the Commandant, IRP-15th Bn, Jammu.

06. During the pendency of this writ petition, J&K Reorganization Act, 2019 came to intervene as a consequence whereof the jurisdiction of the Central Administrative Tribunal (CAT)

came to be extended in the service matters of the employees in the J&K State Service and, as such, all the service related matters pending in the High Court of Jammu & Kashmir and Ladakh came to be transferred by Notification no. G.S.R. 317(E) dated 28.05.2020 issued by the Govt. of India thereby directing transfer of all pending service related cases from the High Court of Jammu & Kashmir and Ladakh to the Central Administrative Tribunal (CAT), Jammu Bench which resulted in transfer of the writ petition being WP(C) no. 3322/2019 to the Central Administrative Tribunal (CAT), Jammu Bench where it came to be diarized as case TA no. 1812/2020.

07. This transfer petition being TA no. 1812/2020 came to be *allowed* by the Central Administrative Tribunal (CAT), Jammu Bench vide its judgment dated 08.09.2021 thereby directing the TA-respondents (the petitioners herein), to release the withheld amount of Rs.2,60,243/- to the writ petitioner (respondent herein) within a period of 15 days with a further liberty to the TA-petitioner (respondent herein) to prefer her claim for reimbursement of an amount of Rs. 19,02,800/- to the TA-respondents (now the petitioners herein) by enclosing the original bills for enabling its settlement in accordance with law, rules and guidelines on the subject.

08. It is this judgment of the Central Administrative Tribunal (CAT), Jammu Bench which has been assailed by the petitioners through the medium of the present writ petition before us.

09. Before we embark upon the examination of the legality and validity of the judgment passed by the Central Administrative Tribunal (CAT), Jammu Bench directing reimbursement of medical claim of the respondent for an amount of Rs. 2,60,243/- and with a further liberty to the TA-petitioner (the respondent herein) to prefer claim for an amount of Rs. 19,02,800/- supported with original bills for the consideration of the TA-respondents (the petitioners herein) in accordance with law, rules and guidelines on the subject, we would like to take stock of the legal position, as to what is the nature of entitlement of a sick/ailing government employee for medical reimbursement and how the same is to be viewed and considered. In this regard, we refer ourselves to the following judgments to have a better clarity and understanding on the subject.

10. In the case of **“Consumer Education & Research Centre and Ors Vs Union of India and Ors.” (1995) 3 SCC 42**, the Hon’ble Supreme Court of India in para 25 has recognized right of a worker while in service or post-retirement in the context of health and medical aid to be a fundamental right. Para 25 is self-stating the position in this regard and, as such, reproduced as under:-

“25. Therefore, we hold that right to health, medical aid to protect the health and vigour to a worker while in service or post-retirement is a fundamental right under Article 21, read with Articles 39(e), 41, 43, 48-A and all related articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person.”

11. In the context of availing treatment by an ailing government employee in a hospital other than the one approved for availing medical facility with assurance of medical reimbursement, the Hon'ble Supreme Court of India in the case of **“Surjit Singh Vs State of Punjab and Ors.” (1996) 2 SCC 336** has expounded nuances with which to view the cases and claims of Govt. employee for medical reimbursement. In this regard, paras 11 & 12 commend themselves to be drawn out from the said judgment so as to be reproduced for the sake of appreciating the perspective provided therein:-

“11. It is otherwise important to bear in mind that self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defence in criminal law. Centuries ago thinkers of this great land conceived of such right and recognized it. Attention can usefully be drawn to Verses 17, 18, 20 and 22 in Chapter 16 of the Garuda Purana (A dialogue suggested between the Divine and Garuda, the bird) in the works of the Divine:

**17. Vinaa dehena kasyaap canpurushaartho na vidyate
Tasmaaddeham dhanam rakshetpunyakarmaani
saadhayet**

Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.

18. **Rakshayetsarvadaatmaanamaatmaa sarvasya
bhaajanam
Rakshane yatnamaatishthejje vanbhaadraani
pashyati**

One should protect his body which is responsible for everything. He who protects himself by all efforts, will see many auspicious occasions in life.

20. **Sharirarakshanopaayaah kriyante sarvadaa budhaih
Necchanti cha punastyaagamapi kushthaadiroginah**

The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body.

22. **Aatmaiva yadi naatmaanamahitebhyo nivarrayet
Konsyo hitakarastasmaadaatmaanam taarayishyati.**

If one does not prevent what is unpleasant to himself, who else will do it? Therefore one should do what is good to himself.”

12. **The appellant therefore had the right to take steps in self preservation. He did not have to stand in queue before the Medical Board the manning and assembling of which, bare- facedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternative hospital as per policy. When the State itself has brought the Escorts on the recognised list, it is futile for it to contend that the appellant could in no event have gone to the Escorts and his claim cannot on that basis be allowed, on suppositions. We think to the contrary. In the facts**

and circumstances, had the appellant remained in India, he could have gone to the Escorts like many others did, to save his life. But instead he has done that in London incurring considerable expense. The doctors causing his operation they are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay to the appellant the rates admissible as per Escorts. The claim of the appellant having been found valid, the question posed at the outset is answered in the affirmative. Of course the sum of Rs.40,000/- already paid to the appellant would have to be adjusted in computation. Since the appellant did not have his claim dealt with in the High Court in the manner it has been projected now in this Court, we do not grant him any interest for the intervening period, even though prayed for. Let the difference be paid to the appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs.

12. In the case of **“State of Punjab and Ors Vs Ram Lubhaya Bagga and Ors.” (1998) 4 SCC 117**, the Hon’ble Supreme Court of India has explored the field of state policy pertaining to the cases of medical treatment of and reimbursement of government employee/s and pondered to justify the balance between the financial resources of the State as against the expenses involved in medical treatment of govt. employee. However, the underlying spirit of the judgment urges to see that an ailing or suffering government employee gets reimbursement even if treated in a private hospital involving higher expenses but nevertheless equalization of expenses can be carried out but not leaving it to the public authorities/officials to fuss about the fact of ailing/suffering government employee having got

treatment in a private hospital and asking for medical reimbursement. Para 17 in this regard is reproduced as under:-

***“17. We find two significant points in the said policy, one the procedural and the other nominating few designated hospitals other than government hospital for treatment. The procedure laid down under this was very onerous, some times not workable, specially in emergency cases. Under it if one needs medical treatment either outside India or in any hospital other than the Hospital of Government of Punjab, an application seeking approval for such treatment in such hospital has to be made to the Director of Health and Family Welfare two months in advance duly recommended by CMO/Medical Superintendent indicating that the treatment for such disease is not available in the hospital of the Government of Punjab. In cases of emergency such application is to be authenticated by CMO/MS to be made fifteen days in advance. It is this procedure which deprived persons from getting prompt and better treatment at other places. Some of the serious diseases do not knock or warn through bell giving them time. Emergency cases require immediate treatment and if with a view to comply with procedure one has to wait then it could be fatal. One may not in such cases live, if such a procedure is strictly followed. It seems keeping this in light, the Government in 1991 modified its policies by including Escorts Heart Institute, New Delhi; Christian Medical College, Ludhiana and Appollo Hospital, Madras, in case of Open heart Surgery as the designated hospitals for treatment of such permissible diseases. Government in its 1991 policy, also reserved its right to revise the list in future. The listing of the aforesaid designated hospitals was with the approval*”**

of the Finance Department. Thereafter on 9th September, 1994 on the advice of the Finance Department the aforesaid 1991 policy was again modified by withdrawing the clarification dated 8th October, 1991 wherein private hospitals in the State and outside were recognised for treatment. Hence the benefit of the designated hospitals was no longer available to an employee for being reimbursed towards his medical expenses. It is in this background present that the new policy dated 5th October, 1995 has come in to force.....”

13. In the case of **“State of Punjab and Ors. Vs Mohan Lal Jindal” (2001) 9 SCC 217**, the medical claim for reimbursement of an employee having got treatment in a hospital other than AIIMS for by-pass surgery was directed to be considered sympathetically.

14. In the case of **“Suman Rakheja Vs. State of Haryana and Anr.” (2004) 13 SCC 562**, the Hon’ble Supreme Court of India came to recognize the medical emergency requiring the treatment in a non-listed medical centre/hospital not a situation to disentitle govt. employee from claiming the medical reimbursement.

15. In the case of **“State of Rajasthan Vs Mahesh Kumar Sharma” (2011) 4 SCC 257**, the Hon’ble Supreme Court of India emphasized the fact of playing by the rules in the case of reimbursement of medical expenses following the spirit of the letters of the rules.

16. In the case of **“Shiva Kant Jha Vs Union of India” (2018) 16 SCC 187**, the Hon’ble Supreme Court of India, in para 17, has dealt with actuality of situation in which the family of ailing/suffering government employee is led to seek medical treatment in a hospital other than the recommended one. Para 17 in this regard is reproduced as under:-

“17. It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the

grant of medical reimbursement in full to the petitioner forcing him to approach this Court.”

17. Our High Court in the cases of **“State of J&K Vs Sakhi Willayat (Dr.)” 2004 (3) JKJ 412** and in **OWP no. 1697/2015** titled - **“Mohd. Azam Vs. State of J&K and Anr.”** has also dealt with the similar issues following the prudence principle.

18. Now, when we come to the examination of the facts and judgment under challenge in the present case, we find that this fact is not under dispute that the respondent’s husband was suffering from life threatening ailment of lung cancer and medical treatment within the then State of Jammu and Kashmir was not available which warranted his referral for specialized treatment outside the State of Jammu and Kashmir. सत्यमेव जयते

19. The controversy in the case came into scene on two aspects. First being that referral of the respondent’s husband was made to PGI, Chandigarh for his treatment and not to any other place much less the one where the respondent had taken her husband for treatment which is private hospital, namely, S. L. Raheja Hospital in Mumbai. Second that the medical expenses incurred by the respondent in connection with her husband’s medical treatment, for which the reimbursement was being claimed but was declined, had been incurred before issuance of Life

Consuming Disease Certificate dated 31.05.2018 issued by the Principal & Dean of Govt. Medical College, Jammu.

20. The respondent from her end sought to meet first objection about actual status of the referral dated 06.11.2017 to PGI, Chandigarh by saying that in the said referral there is a reference made by HOD Pulmonary Medicines, Govt. Chest Disease Hospital, Jammu that the respondent's husband is being referred to PGI, Chandigarh or anywhere, whereas on the other hand the Commandant, IRP-15th Bn, Jammu, as being the employer, claimed that the said referral has been tampered with by insertion of word "anywhere". It is in this state of claim and counter claim that the respondent had come to suffer denial of reimbursement of medical expenses to the amount of ₹2,60,243/-.

21. The Central Administrative Tribunal (CAT), Jammu Bench has held that while a total amount of ₹19,02,800/- had been incurred on the treatment of the respondent's husband but claim for medical reimbursement was made for ₹3,21,545/- out of which only ₹61,302/- came to credited to the respondent thereby leaving an amount of ₹2,60,243/- not paid in reimbursement. The Central Administrative Tribunal (CAT), Jammu Bench came to hold that from the records it is borne out that the medical treatment was taken in an emergent condition and that the withholding of reimbursement of an amount of ₹2,60,243/- was wrong.

22. When we examine the facts and circumstances of the case in the light of the consideration accorded by the Central Administrative Tribunal (CAT), Jammu Bench in directing the Commandant, IRP-15th Bn, Jammu to release an amount of ₹2,60,243/- to the respondent, we find that the Commandant, IRP-15th Bn, Jammu or for that matter the Govt. of UT of Jammu and Kashmir did not act with a mindset of a model employer and rather showed lack of sensitivity to the state of things which the respondent and her ailing husband had gone through in which the only inevitable was sooner or later untimely end of life of the respondent's husband. In this state of dilemma confronting the respondent and her ailing husband as to which place to go for comfort of medical care and attention nobody can be allowed to find any fault with the option exercised by the respondent to take her husband to the private hospital, namely, S. L. Raheja Hospital in Mumbai knowing very well that it was the race against the time. If this much solace of option could not be extended to the respondent in connection with the treatment of her ailing husband in the context of reimbursement of medical expenses that too of an amount of ₹2,60,243/- then it literally means a message to the respondent that she should have let her husband suffer from physical and mental pain and agony in the home and hospital in Jammu itself by accepting the inevitability of fate that her husband was to succumb to the ailment without chance of any recovery there from. This is nothing but being ritualistic in the matter of dealing with a case rather than by realistic with the case.

23. The essence of Civil Services (Medical Attendance-cum-Allowance) Rules, 1990 framed vide SRO-203 dated 14.06.1990 by the Govt. of Jammu and Kashmir in exercise of its constitutional power is not mechanically oriented in the light of how the Hon'ble Supreme Court of India reckons the entitlement of a government employee to medical care and treatment in the need of hour more particularly when life threatening disease/ailment comes to confront a government employee.

24. In the light of the aforesaid, we do not find any infirmity/illegality attending the judgment of the Central Administrative Tribunal (CAT), Jammu Bench, so as to upset it at the call of the petitioner riding on the abovesaid two mechanically oriented objections and, therefore, **dismiss** this writ petition.

(Rahul Bharti)
Judge

(Tashi Rabstan)
Judge

Jammu
16.08.2023
Bunty

Whether the order is reportable: Yes

Whether the order is speaking: Yes