

**CENTRAL ADMINISTRATIVE TRIBUNAL : BANGALORE BENCH  
AT BANGALORE.**

**No. M.A. 239 of 2008  
O.A. 256 of 2008.**

**DATE OF ORDER : 18.9.2009.**

**Hon'ble Shri B. Venkateswara Rao, Member (J).**

**BETWEEN :**

**N.G.CHELLAPPAN S/o Late N.A.Gopal Iyer,  
Aged about 83 years,  
C/o N.C.Jagadish,  
No. 214, 5<sup>th</sup> Main, 3<sup>rd</sup> Avenue,  
Teachers colony, Koramangala,  
Bangalore-560 034.**

**... Applicant**

**( By Shri C.K.Nagendra Prasad, Counsel. )**

**A N D**

1. The Regional Director,  
Employees State Insurance Corporation,  
No. 10, Binnypet, Binny Fields,  
Bangalore-560 023.
2. The Director,  
ESIS (Medical Services),  
ESIC Medical Hospital,  
Rajajinagar, Bangalore-560 010.
3. The Director General,  
E.S.I. Corporation,  
C.I.G. Marg, New Delhi-110 002.
4. Union of India through Secretary,  
Ministry of Labour & Employment,  
Shram Shakti Bhavan,  
Rafi Marg,  
New Delhi-110 001.

**... Respondents**

**( By Shri M. Nagarajan, Counsel – for Respondent No. 2.  
Shri V.N.Holla, Counsel – for Respondent Nos. 1, 3 & 4 )**



ORDER

( B. Venkateswara Rao, Member (J) )

This application is directed against the communications dated 20.4.2007 and 9.5.2006 (Annexures-A/1 & A/2) by which the medical claims of the applicant have been rejected. Through this O.A., the applicant is seeking for the following reliefs :

- (i) To call for records and quash Communication No. 53/D/12/15/005 estt dated 9.5.2006 and 20.4.2007 issued by Respondent No. 1 (Annexures-A/1 & A/2), holding them as illegal, unjust, arbitrary, discriminatory and against the principles of natural justice and violative of Articles 14, 16 and 21 of the Constitution of India.
- (ii) For a direction on Respondent Nos. 1 & 3 to reimburse the medical bills, as audited by Respondent No. 2, to the extent of Rs.2,94,269/-.
- (iii) To award interest on the amount of medical bills @ 24% p.a. and the cost of the proceedings as the applicant is 83 years old.
- (iv) Any other order or relief as deemed fit by this Tribunal in the facts and circumstances of the case in the interest of justice.



The applicant has also filed M.A. No. 239 of 2008 which is an application for condonation of delay in filing the O.A.. He has stated therein the reasons for the delay. After going through the given reasons and the fact that the applicant is now more than 83 years old, for ends of justice, I condone the delay and take up the O.A. for consideration. The M.A. stands allowed.

2. The applicant, an employee of the ESI Corporation retired on superannuation in the year 1983 while holding the post of Deputy Director, ESI

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No. 2 with necessary Certificates (Annexure-A/13). The applicant kept pursuing the matter with the respondents from 2004 to 2006 for claims amounting to Rs.2,94,560/- and finally he received a letter dated 9.5.2006 from Respondent No. 1 stating that the reimbursement claims for Rs.2,94,269/- submitted by him to Director ESIS (Medical) Services, Bangalore, with regard to super-speciality treatment availed is not admissible prior to 1.4.2006 as per Headquarters instructions. The figure Rs.2,94,269/- was arrived at by Respondent No. 2 after auditing and deducting the inadmissible reimbursed amount of Rs.291/-. On not being paid the amount claimed, the applicant filed a complaint in IV Addl. Consumer District Redressal Forum, Bangalore, and thereafter an appeal before the Karnataka State Consumer Disputes Redressal Commission, Bangalore. In the appeal, the orders of the District Forum were set aside and the appeal was allowed to be withdrawn giving liberty to the applicant to agitate for his rights before any other Court/Authority. The said letters/orders have been annexed as Annexures A/14 to A/18. The applicant submits that a few more similarly placed persons like S/Shri A.S.Rawat. B. Basavaraj. P.K.Srinivasamurthy, R.S.Majigud and G. Ramaiah have been paid medical bills prior to 1.4.2006 and hence, withholding the medical bill of the applicant is arbitrary and amounts to gross discrimination as also against Articles 14, 16, 21 of the Constitution of India. It is the submission of the applicant that Respondent Nos. 1 & 3 have made a gross discrimination in the matter of reimbursement of medical bills to the applicant while allowing the medical reimbursement to other similarly placed employees and for such discrimination the O.A. should be allowed and the applicant be granted the reliefs claimed by him.

The respondents have contested the case by filing a reply as also an additional reply, with the Respondent No. 2 filing a separate reply. In the reply



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and the applicant cannot claim any benefit or medical treatment facility under the same. It is the submission of the respondents that ESIC pensioners are distinct and different from insured persons covered under ESI Act, that as per the Scheme the applicant was entitled to avail medical benefits only through ESI Dispensaries and cannot claim for reimbursement of medical expenses for the medical treatment taken in a hospital other than ESI Dispensaries. The respondents state that there was a delay of 11 to 4 months in all the medical claims submitted by the applicant, that no referral letter was obtained by him from ESI Dispensary/ESI Superintendent and that he had not sought prior permission from Respondent No. 2 immediately after admission in hospital, thereby flouting the laid down rules. The respondents have averred that the payments made to other retired employees towards reimbursement, the concerned pensioners obtained referral letters from ESI Hospital/Dispensaries either before taking treatment or thereafter within 3 days in case of emergency. The case of the applicant does not stand on the same footing as those of the other persons. The medical scheme does not provide for medical reimbursement directly to ESIC pensioners. The medical facilities available to ESI pensioners and the clarification issued by ESI Headquarters dated 27.7.2005 have been enclosed as Annexures-R-XII and R-XIII. The respondents contend that the applicant himself has admitted that the medical facilities to retired pensioners were extended through ESI Dispensaries and, therefore, demand for medical facility beyond facilities available in ESI Dispensary cannot be allowed. The bills submitted by the applicant are not genuine and according to rules, the clarifications unconvincing. Hence the respondents submit that they are not liable to reimburse to the applicant an amount of Rs.2,94,269/- with interest to the applicant and pray for dismissal of the O.A.



The reply of the 2<sup>nd</sup> Respondent states that he is only the forwarding

7. Learned counsel for the respondents have reiterated the contentions made in their respective reply and further arguing that medical facility as provided under the agreement with the State Government is limited as can be found from proceedings of Government of Karnataka dated 16.5.1986 (Annexure-R/1) read with Corrigendum dated 20.5.1987 (Annexure-R/2). As per the scheme, the applicant can avail medical benefits only through ESI Dispensaries and cannot claim reimbursement for the medical treatment obtained in a hospital other than ESI Dispensaries. The applicant was aware of the prevailing rules, he should have sought prior permission or at least should have obtained a referral letter from ESI Dispensary/ESI Superintendent immediately after admission in hospital. He chose to flout the established rules and submit the claims after 11 to 4 months subsequent to hospitalisation/discharge. The medical scheme formulated is to extend medical care keeping in mind the cost factor and hence, pensioners cannot be allowed to claim reimbursement after obtaining costly treatment. The other retired employees the applicant is comparing himself with had all obtained referral letters from ESI Dispensaries before taking treatment.

8. I have perused the pleadings and material papers on record and considered the arguments of learned counsel appearing for both sides. I find the only issue for decision before me is whether the applicant is entitled for reimbursement as per the medical scheme to retired employees of ESI Corporation. The main contention of the applicant is that the impugned communications dated 9.5.2006 and 20.4.2007 are arbitrary and discriminatory and against Articles 14 and 16 of the Constitution of India. While considering the



*[Handwritten signature]*

ured employees vests with Respondent Nos. 1, 3 & 4. He contends that medical bills for Rs.2,94,269/- for treatment obtained by the applicant and his wife in private hospitals through ESI Dispensary, Wilson Garden, had been submitted to him and he had forwarded those to State Medical Commissioner, ESI Corporation, Bangalore, the competent authority to consider the claim. for further action vide letter dated 25.3.2006 (Annexure-R/3). Hence, he prays for his deletion from the O.A. as he is not the sanctioning authority.

5. I have heard Shri C.K.Nagendra Prasad, learned counsel appearing for the applicant, Shri V.N.Holla, learned counsel appearing for Respondent Nos. 1, 3 and 4 and Shri M. Nagarajan, learned counsel appearing for Respondent No. 2. I have perused the O.A. in detail, the reply and the additional reply filed by the respondents and the rejoinder of the applicant.

6. It is the submission of the learned counsel for the applicant that the impugned communications dated 9.5.2006 and 20.4.2007 are arbitrary and discriminatory as similarly placed employees have been allowed medical reimbursement, that the applicant cannot be denied a fundamental right with respect to his health on frivolous and untenable grounds in reimbursing the medical expenses, that the orders issued by the Karnataka Government are binding on the respondents and they have to act within the four corners of such orders, that principles of natural justice should be followed, that no discrimination within the same class of retired employees should be there and that there has been no proper application of mind by Respondent Nos. I and III in rejecting the applicant's claim and as such, their orders are arbitrary, illegal, discriminatory and not sustainable in the eyes of law, the impugned orders suffer from various

arguments of the applicant, I have carefully gone through the above mentioned medical scheme. I find that the applicant had voluntarily enrolled himself as a member under the said medical scheme, on payment of a specified rate of contribution, and as per the scheme, a retired employee is entitled for medical treatment of himself and his dependents through ESI Dispensaries. According to the Notification dated 18.4.1986 and Corrigendum dated 20.5.1987, treatment is to be availed by the pensioner and his dependents only in ESI Dispensaries. The other ground taken by the applicant is that some similarly placed persons have been paid medical bills prior to 1.4.2006 but in the case of the applicant, the respondents have rejected the claim which shows clear discrimination and arbitrariness on the part of the respondents. The respondents have made it clear in their reply that medical treatment in private hospitals on emergency basis on or before 1.4.2006 is not at all permissible but in the case of Shri A.S.Rawat and three others, payments were made by them towards reimbursements since the said persons had obtained referral letters from ESI Hospital/Dispensaries, the same does not stand in the case of the applicant since he has neither informed the authorities or obtained referral letters from ESI Hospital/Dispensary. After a careful reading of the pleadings and after considering the contentions raised by the respondents, I find a lot of force in the submissions and arguments advanced by the learned counsel for the respondents. I am of the opinion that the impugned communications dated 9.5.2006 and 20.4.2007 (Annexures-A/1 & A/2) are just and proper and there is no need to interfere into the same.



For the foregoing reasons and discussions made above and in view of

Accordingly, it is dismissed. M.A. No. 239 of 2008 stands disposed of. No order as to costs.

*sd-*

( B. Venkateswara Rao )  
Member (J)



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*[Handwritten Signature]*  
जनसहाय अधिकारी  
Section Officer  
केंद्रीय प्रशासनिक अधिकारण  
Central Administrative Tribunal  
बेंगलूर न्यायलय बेंगलूर  
Bangalore Bench, Bangalore