

GAHC010177542015



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/4406/2015**

REENA DAS  
W/O SRI MANOJ KR. DEKA R/O 3 NO. SALBARI, NOONMATI, P.S.  
NOONMATI, DIST. KAMRUP, ASSAM, PIN - 7810020.

VERSUS

UNION OF INDIA and ANR,  
REP. BY THE SENIOR ARCHITECH NEZ CENTRAL PUBLIC WORKS  
DEPARTMENT, CLEVE COLONY, SHILLONG-3.

2:ADDITIONAL DIRECTOR

S.A.G. CENTRAL GOVT. HEALTH SERVICES  
SHILLONG-3

**Advocate for the Petitioner : MR. M C DAS**

**Advocate for the Respondent : ASSTT.S.G.I.**

**BEFORE**  
**HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

**JUDGMENT & ORDER**

**Date : 29-01-2021**

Heard Mr. J. Sarma, learned counsel for the petitioner and Ms. R. Devi, learned Central Government Counsel for the respondents.

2. This writ petition under Article 226 of the Constitution of India has been preferred by the petitioner being aggrieved by the decision taken by the respondent authorities in the impugned order dated 18.11.2014 (Annexure-8) in so far as the denial of reimbursement of Travelling Allowances (TA) to the petitioner in respect of her treatment taken at Tata Memorial Hospital, Mumbai in the month of December, 2012 is concerned.

3. The petitioner is an employee in the office of the Senior Architect (NEZ), Central Public Works Department (CPWD), Shillong since 1991. In the year 2016 at the time of filing this petition, the petitioner was serving in the capacity of Architect Assistant in the said office.

4. On 24.08.1998, the petitioner had to undergo a surgery at City Heart Hospital, Guwahati for removal of a breast lump. Though the surgery was successful but on biopsy on the tissue from lesion the disease was detected as seirrhous carcinoma of breast. A report of Histopathology dated 07.09.1998 (Annexure-1, Page-13) was given to that effect by the concerned medical specialist. Since the medical facilities available in the North Eastern Region, more particularly, in the States of Assam and Meghalaya were not so advanced at that point of time to take treatment in respect of the ailment of the petitioner, the case of the petitioner was placed before the Referral Medical Board of the Gauhati Medical College & Hospital (GMCH). The Referral Medical Board, GMCH after due examination, advised the petitioner to attend the Tata Memorial Hospital (TMH), Mumbai for special investigation and treatment and a Referral Medical Certificate dated 22.09.1998 (Annexure-2, Page-15) was issued to that effect. By the Referral Medical Certificate, it was certified that the petitioner was suffering from Carsinoma (L) Breast. She was advised to attend TMH, Mumbai for special investigation and treatment as such facilities were not available within the State. The Referral Medical Certificate signed by all the members had further recommended one escort with the petitioner. The Superintendent, GMCH vide his letter dated 22.09.1998 (Annexure-2, Page-14) wrote to the Director of Health Services, Assam that the petitioner had been advised by the Referral Medical Board to be treated at the TMH, Mumbai for further investigation and treatment. It was further mentioned that one escort may be allowed to accompany the petitioner.

5. On 06.10.1998, the petitioner had undergone a further surgery at the TMH, Mumbai and she was advised CMF Chemotherapy and radio therapy treatment at the infected breast in six cycles and to visit the TMH, Mumbai again. After her return to Guwahati, the petitioner submitted the documents for ex-post facto approval for reimbursement of the costs of medical treatment and TA admissible under the rules by submitting her application dated 28.12.1998 (Annexure-3, Page-16). Upon consideration of the Referral Medical Board's recommendation, the Director of Health Services, Assam approved the petitioner's further treatment at the TMH, Mumbai vide his letter no. HSG/MT/17/98/379-80 dated 01.01.1999.

6. As per medical advice, the petitioner was asked to visit the TMH, Mumbai after 6 (six) months, then after one year and since 2012, after every two years. By letter dated 23.04.1999 (Annexure-4, Page-17), letter dated 16.09.1999 (Annexure-4, Page-18), letter dated 02.03.2000 (Annexure-4, Page-19), letter dated 27.02.2001 (Annexure-4, Page-20), letter dated 23.07.2001 (Annexure-4, Page-21), letter dated 08.02.2002 (Annexure-4, Page-22) and letter dated 22.08.2002 (Annexure-4 at page 23), the Director of Health Services, Assam accorded his approvals for follow-up surgery for carcinoma, check-up, further check-up, etc. of the petitioner. The approvals were accorded with due information to the Chief Engineer, CPWD, Shillong. It was further indicated that the financial implications were to be borne by the Government of India as per the guidelines and one escort was allowed to accompany the petitioner in her to and fro journey to Mumbai.

7. During the subsequent periods also, approvals were accorded by the respondent authorities to the petitioner to undergo her medical treatment at the TMH, Mumbai. The office of the Additional Director, Central Government Health Services CGHS, Shillong vide orders dated 27.06.2006 (Annexure-5, Page-24) and dated 27.11.2007 (Annexure-5, Page-25) had allowed the petitioner to undergo treatment/review at the TMH, Mumbai with one escort. It was indicated therein that the medical reimbursement claims of the petitioner would be restricted as per the CGHS Mumbai/AIIMS approved rates and she was permitted to travel by entitled class of railway. Subsequently, the office of the Additional Director, CGHS, Shillong passed order dated 03.12.2009 (Annexure-5, Page-26) and order dated 26.11.2010

(Annexure-5, Page-27) according approvals for the petitioner's medical treatment and TA at the TMH, Mumbai. By those orders, the Medical Superintendent, TMH, Mumbai was requested to offer credit facilities to the beneficiary and to submit the bills to the concerned authority. The approvals were accorded for one escort with the petitioner and for travel by entitled class of accommodation. After taking treatment on those occasions, the petitioner submitted the necessary documents for reimbursement of the costs of medical treatment and TA and the same were duly reimbursed in due course.

8. Necessity arose once again in the year 2012 for the petitioner to go for a further check-up at the TMH, Mumbai as per the advice of the doctor and accordingly, she got appointment at the TMH, Mumbai on 05.12.2012. The petitioner intimated the Additional Director, CGHS, Shillong, through proper channel, vide her letter dated 06.11.2012 (Annexure-6, Page-28) that she had to visit the TMH, Mumbai for her medical check-up as per her scheduled appointment on 05.12.2012 and requested to accord his approval. On receipt of the same, the authority endorsed a note thereon asking the Additional Director, CGHS, Shillong as to whether similar facilities were available in Shillong or Guwahati or whether such check-up or treatment at the TMH, Mumbai would be absolutely necessary because it involved payment of TA. When nothing was received from the authorities as regards approval of the medical treatment at Mumbai pursuant to her letter dated 06.11.2012 before the scheduled date of travel, the petitioner was compelled to travel to Mumbai without receipt of approval in advance since the appointment at the TMH, Mumbai was scheduled on 05.12.2012. Accordingly, the petitioner visited the TMH, Mumbai for her treatment check-up which continued till 15.12.2012 and thereafter, returned back from Mumbai. Since for a considerable time of time no information as regards the proposal for reimbursement was received by the petitioner, she approached the authorities for finalization of her claim. It was on 18.11.2014, the Additional Director, CGHS, Shillong vide his letter dated 18.11.2014 (Annexure-8, Page-30) had informed the office of the petitioner that the petitioner could avail treatment at the TMH, Mumbai but TA would not be admissible and, as such, the reimbursement would be restricted to the CGHS, Mumbai/TMH rates as per the Referral Board's guidelines of the CGHS. Aggrieved thereby, the petitioner has approached this Court.

9. In this writ petition, the respondent has taken a stand in its affidavit-in-opposition by taking recourse to a Office Memorandum dated 07.04.1999 to deny the reimbursement of the TA for the petitioner's medical treatment at the TMH, Mumbai taken in December, 2012. Reference has been made to Clause 4 thereof which states that in case the beneficiary, inspite of facilities being available in city, still chooses to get treatment in CGHS recognized Hospital in another the city, permission may be granted to the serving employees but without any TA and DA. It has been further stated that Dr. B. Barooah Cancer Institute, Guwahati and NEIGRIMS, Shillong are offering treatment for cancer through highly qualified cancer specialists and oncologist. But, the aforesaid contentions of the respondents stand belied by a letter dated 14.11.2012 (Annexure-7, Page-29) of the Additional Director, CGHS, Shillong and other statements made in the affidavit.

10. The petitioner herein sought permission from the competent authority for her medical check-up at the TMH, Mumbai in December, 2012 well in advance on 06.11.2012 through proper channel. On receipt of her application, the same was forwarded to the Additional Director, CGHS, Shillong for its opinion. The letter dated 14.11.2012 appeared to have been written by the Additional Director, CGHS, Shillong in the context of the endorsement of the authority made in the body of the petitioner's letter dated 06.11.2012 seeking approval. By the letter, the Additional Director, CGHS, Shillong had informed the employer of the petitioner that in the absence of a cancer specialist's (oncologist) opinion, it was difficult to decide regarding about absolute necessity of treatment/follow-up at the TMH, Mumbai. But as per information of the Additional Director, CGHS, Shillong, the facilities that were available at the TMH, Mumbai were not available in Shillong or Guwahati. It was further stated that for specific comments/opinion, the patient i.e. the petitioner may be referred to the Government Specialist (Oncologist) at the Civil Hospital/NEIGRIHMS, Shillong and otherwise, upon the merit of the case, the patient may, as well, be allowed treatment at the Tata Memorial Hospital, Mumbai.

11. But the respondents are silent as to whether the petitioner was referred to the Civil Hospital/NEIGRIHMS, Shillong thereafter. What actions the respondents had taken in between the period from 14.11.2012 to 18.11.2014 on which date the claim for reimbursement of the

travelling expenditure of the petitioner was denied is not disclosed by the respondents. The Additional Director, CGHS, Shillong, the facilities that were available at the TMH, Mumbai had admitted that the facilities available at the TMH, Mumbai in November, 2012 were available in Shillong and Guwahati, two premier cities in the North Eastern Region. The Additional Director, CGHS, Shillong could not render his opinion as to whether the medical treatment/check-up sought to be taken by the petitioner at the TMH, Mumbai were necessitated or not. From the stands taken by the respondents, it is clearly evident that if similar facilities were not available then the petitioner had to be allowed to take her treatment at the TMH, Mumbai.

12. The respondents have not stated in their affidavit-in-opposition in clear terms as to whether medical facilities for cancer treatment of the petitioner were available in the North Eastern Region in the year 2012 or not. They had simply denied the claim of the petitioner by stating in their affidavit that the situation regarding medical facilities in the North Eastern Region were completely different in the year 2014. By stating so, they have skirted the issue regarding availability of the required medical facilities in the year 2012. As could be seen from the documents regarding the petitioner's earlier treatment, mentioned above, the respondent authorities had allowed the claims of the medical treatment taken by the petitioner during the earlier years at the Tata Memorial Hospital, Mumbai as well as the TA. Denial of the claim for reimbursement of TA could have been justified had the respondents been able to furnish some supporting documents to show that the medical facilities that were available at the TMH, Mumbai in November-December, 2012 for cancer treatment of the petitioner were also available in the North Eastern Region say, Shillong or Guwahati in November-December, 2012 which they respondents have failed to show. But the respondents have failed to do so. What took the respondents about two years till 14.11.2014 to deny the approval sought on 06.11.2012 is not explained, much less satisfactorily, in their affidavit-in-opposition.

13. In the light of the above discussion, the decision to deny the reimbursement of TA in respect of the medical treatment taken by the petitioner in December, 2012 at the TMH, Mumbai by the respondents vide the letter dated 14.11.2014 is found to be arbitrary, unjust and bereft of any reason. In such view of the matter, this Court in peculiar fact situation

obtaining in the case, is of the considered view that the petitioner is entitled for reimbursement of TA incurred in respect of her medical treatment taken for her cancer treatment during the month of December, 2012 at the TMH, Mumbai by the respondent authorities. Accordingly, it is directed that the petitioner shall submit her claim with regard to reimbursement of TA incurred by her for her medical treatment of cancer during December, 2012 at the TMH, Mumbai to the respondent authorities within 10 (ten) days from today and on receipt of such proposal, the respondent authorities shall process in accordance with the procedure prescribed in that regard and also by taking into consideration the earlier approvals accorded in respect of the petitioner's earlier claims and thereafter, shall disburse the same within a period of 2 (two) months thereafter.

14. With the observations made and the directions given above, the writ petition stands allowed to the extent indicated above. There shall, however, be no order as to cost.

**JUDGE**

**Comparing Assistant**