THE SUPREME COURT OF INDIA

(ORIGINAL CIVIL WRIT JURISDICTION)

Under Art 32 of the Constitution of India

Civil Writ Petition No 694 of 2015

In the matter of:

SHIVA KANT JHA .... Petitioner

vs.

UNION OF INDIA

Through The Secretary, Ministry of Health & F. W.,........... Respondent

PETITIONER'S RESPONSE TO THE RESPONDENT'S REPLY AFFIDAVIT RECEIVED ON APRIL 27, 2016

I, Shiva Kant Jha, Petitioner-in-person in the aforementioned Matter [W.P. (C) No 694 of 2015], do hereby solemnly affirm and state as follows:

That this Petitioner has gone through the Respondent's Reply Affidavit filed, and has perused its content in the context of the facts and circumstances of the Case, and seeks the leave of this Hon'ble Court to present hereunder his considered response hereinafter to be referred as the Petitioner's Response to the Respondent's Reply Affidavit.

That for the sake of convenience this Petitioner intends to structure his Response to the Respondent's Counter-Affidavit by structuring his averments and submissions in certain clear segments for clarity and comprehensiveness.

Structure of the Petitioner's Response to the Respondent's Reply Affidavit

. PART 1

Petitioner's threshold submissions on points which may govern the judicial perspective

The problems faced by the senior and retired civil servants of the Central Government have been agonising and endemic over all the years. The gravity of this distressing situations would be clear from the reading of the following illustrative comments of judicial displeasure:

(i) "This is one more case of a retired Government servant who has been refused reimbursement of the full medical expenses incurred by him despite numerous judgments on this issue. The respondents chose to act in complete violation of the principles of law laid down by various judgments negating the Central Government Health Scheme (hereinafter to be referred to as, `the CGHS'), which was propounded as a health facility scheme for the Central Government employees so that they are not left without medical care after retirement." *Milap Singh's Case* 2005 (2) SLR 75 Delhi.

(ii) "It is quite shocking that despite various pronouncements of this Court and of the Apex Court the respondents in utter defiance of the law laid down have taken a position that the pensioner is not entitled to the grant of medical reimbursement since he did not opt to become a member of the said health scheme after his retirement or before the said surgery undergone by him. **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** on the pretext that he has not opted to become a member of the scheme or had paid the requisite subscription after having undergone the operation or any other medical treatment. " *Suraj Bhan v. Government of NCT & Ors* [ILR (2010) IV DELHI 559 WP]

(iii) " The only submission by learned counsel for respondent Mr. Pinky Anand was that the respondents had reimbursed the rates as per the circular of 1996 and *in all other cases reimbursement had only been done when ordered by the Court. This is hardly a satisfactory state of affairs*." *V.K. Gupta v. Union of India* 97 (2002) DLT 337 para 10 (italics supplied)

PART 2

1.That the Respondent's Reply-Affidavit is structured in two segments: First, that answers to this Hon'ble Court's Order dated 11.4.2016 spanning from paragraphs 2 to 7; and Second, that purports to answer this Petitioner's other points.. In the Part 2 of this Petitioner's Response, this Petitioner submits on the Respondent's submissions made in compliance with the Hon'ble aforesaid Court Order. .

1. That Hon'ble Court's Order of April 11, 2016 ran thus:

> "In order to ascertain, what is the procedure that is being followed in dealing with the claims of such C.G.H.S. Card Holders, we direct the respondent/Union of

India to file their reply within six weeks, wherein the respondent should indicate as to what is the in-house procedure that is prevalent and any appeal/remedy is available in dealing with the claims of such Card Holders and also the nature of similar claims pending in respect of C.G.H.S. Card Holders, apart from the claims of the petitioner herein."

With utmost clarity this Hon'ble Court required the Respondent to mention in its Reply

(a) the facts which can assist the Hon'ble Court to "ascertain" the operative facts in the CGHS having relevance to the issues under consideration in this Writ Petition; .

(b) the facts that can show to the Hon'ble Court "the in-house procedure that is prevalent and any appeal/remedy is available in dealing with the claims of such Card Holders";

(c) the facts which can disclose "the nature of similar claims pending in respect of C.G.H.S. Card Holders, apart from the claims of the petitioner herein".

2.That this Petitioner submits that the Respondent in its Reply has evaded all the aforesaid 3 directions. With reference to each of these three points, this Petitionerintends to submit thus in the following 3 sub- paragraphs numbered (a) , (b), & (c).

(a) To "**ascertain" means, as Collins Cobuild Dictionary" says. "**Assure, convince", "Find out or learn for a certainty; make sure of, get to know". The Respondent has not stated things wherefrom this Hon'ble Cant can ascertain " the procedure that is being followed in dealing with the claims of such CGHS. Card Holders...".The Respondent has missed the import of expressions like "<u>such[1]</u> CGHS Card Holders" and "the nature of <u>similar[2]</u> claims pending in respect of CGHS Card Holders, <u>apart from the claims of the petitioner herein[3]</u>". All these underlined expressions indicate that the Hon'ble contemplated reply to pertain to the type of cases, as of this Petitioner. This mistake is primarily because the CGHS does not notice that it has to deal with broadly two types of Cases: (i) those in which the entitlement of the CGHS is on account of the statutory Rules, Constitutional Rules, the Judicially evolved Doctrine of Legitimate Expectation, all when considered under the footlight of our Fundamental Rights under Articles

[1] **such:- I 1.**Of the kind, degree, or category previously specified or implied contextually. Preceding the n. & any indef. Article (*arch.,* also w. Indef. Article omitted), or pred. OE. **2.** Of the same kind or degree as something previously specified or implied contextually; of that kind; similar. *arch.* exc. With preceding numeral or indef. adj. (determiner), *any, no, many,* etc. OE. **3.***pred.* Of the character previously specified by a preceding adj., so. (Used to avoid repetition.) *arch.* OE.

[2] **similar:- 1** Chiefly *Anat.* Of the same substance or structure throughout; homogeneous. **2**. Having a resemblance or likeness; of the same nature or kind.

[3] Expression "apart from the claims of the petitioner herein" contextually means only "such other cases which are analytically of the type of this Petitioner-in-person's Case.

14 and 21[4], and second, where the benefit of the CGHS has been administratively granted, or granted in terms of POLICY only.[5]

(b) The Hon'ble Court wanted the Respondent to tell it about "the in-house procedure that is prevalent and any appeal/remedy is available in dealing with the claims of such Card Holders." "In-house " means "of or pertaining to the internal affairs of an institution or organization; existing within an institution or organization."In the context of this Petitioner's Case, the Court wanted to see whether there existed the procedure to grant Hearing to the aggrieved person, or whether there existed any remedy by way of Appeal to obtain justice. The Respondent evades the issues of the grant of Hearing, and on the availability of an Appellate Remedy it has kept silence. .

This Petitioner submits that the portrait of the "in house" procedure has been graphically drawn up in the CAG's Report on the Performance Audit of the Government of India No. 3 of 2010-11 {in the Writ Petition at page 243]. The point to be noted is that the Respondent does even refer to grant of Hearing or an appellate remedy. It only refers to the procedure of representation to the Competent Authority <u>after the decision</u>. Instead of granting the remedy through hearing, [(a) as required under the proviso to the Rules 3 and 6 of the CS (MA) Attendance Rules,(b) as required by the rules of administrative Fair Play that operates with the Judicially evolved Doctrine of Legitimate Expectation, (c) as

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[4]This Petitioner would dealt this aspect of the matter in the Writ Petition (paras.13-19..at pages. 19-27), and in his Written Submission handed over to the Respondent's lawyer in the Hon'ble Court itself, is now appended with this Petitioner's Reply marked as ANNEX A (the most relevant are its Part A segments 1 to 6.).

[5] As things stand now the CGHS has about 8,49,816 card holders with a beneficiary base of 32,08,655. The following persons are, at present, entitled to get benefits from the CGHS [vide page 1 of the 71st Report of the Department-related Parliamentary Standing Committee on the functioning of the CGHS presented to the Rajya Sabha and the Lok Sabha on 6th August 2013 .

- All central Government employees and their dependant family members residing in CGHS covered areas.
- Central Government Pensioners and their eligible family members getting pension from Central Civil Estimates
- Sitting and Ex-Members of Parliament.
- Ex-Governors and Lt. Governors
- Freedom Fighters
- Ex-Vice-Presidents
- Former Prime Ministers
- Sitting and Ex-Judges of the Supreme Court and High Courts
- Employees and pensioners of certain autonomous organizations in Delhi.
- Journalists (in Delhi) accredited with PLB (for OPD and at RML Hospital)
- Delhi Police Personnel in Delhi only
- Railway Board employees

required by the Rules of Natural Justice as interpreted by our courts with reference to Article 14 of the our Constitution), or (d) as required by the administrative Norms of Fair Play, the CGHS refers to the practice of in-house of tendering of memorial to some Competent Authority, and that too after the event. In appreciating the arbitrariness, and futility of this unthinkable procedure this Petitioner submits that he can think of only one authority which might justify the suggested method of evaluating arbitrary administrative decision: on the logic of Humpty Dumpty in Lewis Carroll's *Alice in the Wonderland*[6].

(c) The effect of the Hon'ble Court's direction to furnish "the nature of similar claims pending in respect of CGHS . Card Holders, apart from the claims of the petitioner herein" was clearly to ascertain the Cases of the CGHS Claimants coming within the category to which this Petitioner comes. Only a list of such cases <u>pending before the Hon'ble Supreme Court</u> was required to be furnished to the Hon'ble Court.Instead of furnishing this required information, the CGHS has tabulated 6 cases in the Para 7 of the Respondent's Reply Affidavit. On this, this Petitioner submits:

(i) The information furnished in para 7 of the Respondent's Reply-Affidavit is wholly irrelevant to the Hon'ble Court's query made in its Order dated 11.4.2016. These are the Cases pending before the CGHS itself. This Petitioner does not deem his business to comment on their merits.

(ii) This Respondent draws only one point from the details given by the Respondent that there is no Case by a CGHS Claimant pending before this Hon'ble Court. This Hon'ble Court may appreciate that the paucity of resources, constraints of health, and the apathy towards old ailing retired civil servants seldom facilitate carrying litigation to this Apex Court, compelling them, as the said CGHS Report refers[7], to suffer with tongue-tied patience till the mundane matters cease to have any value for them.

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[6] "Let the jury consider their verdict," the King said, for about the twentieth time that day.
"No, no!" said the Queen. "Sentence first–verdict afterward."
"Stuff and nonsense!" said Alice loudly. "The idea of having the sentence first!"
"Hold your tongue!" said the Queen, turning purple.
"I won't!" said Alice.
"Off with her head!" the Queen shouted at the top of her voice. Nobody moved.
"Who cares for you?" said Alice. (She had grown to her full size by this time.) "You're nothing but a pack of cards!"

[7] The CAG on the Performance Audit of the Govt. of India No. 3 of 2010-11 [**Annex P- 12** of the Writ Petition]

(iii) This Petitioner submits that to consider the claim of the Petitioner as a matter of POLICY, as this Respondent has considered it in the para 21 of the Respondent's Reply, is wholly erroneous and arbitrary as this Petitioner's claim is founded on his *accrued legal rights*. This matter has been dealt with in his Writ Petition, but with greater details and under sharper focus, illustrated through a diagram, in his Written Submissions handed over to the Respondent's counsel, with the leave of the Hon'ble Court, on 11.4.2016. This Petitioner submits that in the Writ Petition itself he had stated that in claiming the benefits under the Writ Petition he did not invoke benefit under POLICY[8], but asserted his legal claims accruing to him for the reasons set forth in the Writ Petition but more comprehensively in the Written Submissions (marked as **Annex A** to this Petitioner's Reply). To confuse one for the other is unfair. The Respondent's Reply-Affidavit does not see the difference between policy and accrued legal rights. The Respondent'sassertion can invoke inits support only the authority of Humpty Dumpty, that Lord Atkin quoted in his judgement in *Liversidge* v. *Anderson :* 'When I use a word' Humpty Dumpty said in rather scornful tone, 'it means just what I chose to mean, neither more nor less'. 'The question is,' said Alice 'Whether you can make words mean different things'. 'The question is', said Humpty Dumpty, 'who is to be the master – that is all." (*Through the Looking Glass, c.* vi.)

(a) Vide **Writ Petition, paras 13/14 to 18 at pages 19-26.**

(b) Vide**Written Submission** paras 1 to 11. [9][**Annex A** to this Response to the Respondent's Reply-Affidavit.]

[8] '"This Petition is on the assumption that whilst in the matters of policy and efficiency the Government is the sole judge of its actions, the wielders of the power are responsible to a Court of Justice for the lawfulness of what they do, and of that the Court is the only Judge." {The introductory placitum of the Writ Petition."

Again in para 18 of the **Writ Petition** : to quote:

"This Petitioner raises in this Writ Petition mainly *justiciable issues* amenable to Judicial Review. It questions the actions which offend fundamental rights, transgresses the administrative norms judicially settled as the binding norms governing administrative decisions. The Supreme Court has held that "any act of the repository of power, whether legislative or administrative or quasi judicial is open to challenge, if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land, or if it is so arbitrary or unreasonable that no fair minded authority could ever have made it"(*ShriSita Ram Sugar Co. Ltd. v. Union of India,* AIR 1990 SC 1277, 1297). The CGHS cannot ignore the conditionalities to which its powers are subject. ..."

[9] With the leave of this Hon'ble Court this Petitioner handed over a copy of the Written Submissions to the Respondent's Advocate, and a copy transmitted again that very day to the Government Advocate, and the Secretary Health as attachments with e-mail. Now this Written Submission is annexed with this Response to the Reply of the Respondent (Annex A) It deserves to be mentioned that the Respondent has wholly ignored that Written Submission.

3. In short, the Respondent went wrong by not noticing the differentiating factors that this Petitioner had brought out in paragraphs 13-18 of the Writ Petition. These factors were presented by the Petitioner more comprehensively, and under sharper focus in his Written Submissions (pages1 to 11). These factors are specific to the Cases coming within the X Zone the portrait of which this Petitioner had drawn over the initial 11pages in his Written Submissions. The first paragraph expresses the heart of the matter thus: to quote--

"The claim of this Petitioner comes within the intersecting space, (X), of the three sources of entitlements represented through the following Diagram. It is this X Zone of medical benefits to which all the retired officers of the Central Government Civil Services (Class-I) are entitled. It is this Zone X, to which even the medical reimbursement claims of the retired Judges of the Hon'ble Supreme Court belong in view of the provisions of Section 23C of the Supreme Court Judges (Salaries and Conditions of Services Act, 1958 that entitles them to "the same facilities as respects medical treatment and on the same conditions as a retired officer of the central civil services Class-I and his family".

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4.This Petitioner's claims pertain to treatment under Emergency. Such treatment under Emergency is permitted (i) under Rule 6 of the CS (MA) Rules 1944; (ii) under the administrative Circular on which the Respondent also relies vide Annex A-3 to the Respondent's Reply-Affidavit. But it cannot be questioned that the Government has inherent right to examine claims as it possesses power to reject them if *found fake or false*, But such findings should be fair and just, and arrived at in accordance with the Rules of Natural Justice, and administrative Fair Play. This would require:

(i) grant of a fair Opportunity to be heard before decision,
(ii) communication of reasons for an adverse decision for taking appropriate remedial actions, and
(iii) an opportunity to lead evidence in his favour so that no arbitrary decision may ever have a last laugh.

The CGHS denies wholly grant of an opportunity though it is bound to do : vide Grounds 33-38 at pages 72-77 of the Writ Petition.

It deserves to be mentioned that this **Written Submissions** is structured to answer the Attorney General who had, whilst seeking first adjournment on 14/12/2016, had told the Hon'ble Court " that the competent authority is examining the validity of the claims made by the petitioner and that an additional affidavit shall be filed within four weeks as to the amounts found due and payable to him." And this Petitioner had countered him that all the issues involved are already settled under the court decisions. To bear out my contention, this Petitioner divided the said Written Submissions into 3: Part A dealing with this nature's of this Petitioner's entitlement; Part B highlighting the core issues with reference to the various decisions governing such points; and Part C providing a chart of ISSUES already judicially considered in favour of this Petitioner. It is now for this Hon'ble Court to consider whether the Government was right in dragging the matter this way making this old and ailing man to go the extent of knocking at this Hon'ble Court's door. Surely he has done so for his benefit, but he has done so for all the suffering souls like him who cannot litigate, cannot get even a reply from the Government, and for many comfortable quetus is put by death, unless under the Catherine wheel of delay and expenditure forgetting the claim becomes the only prudent choice left.

The CGHS provides no appellate remedy against injustice done by it though "appellate remedy" is specifically granted under the Provisos to Rules 3 and 6 of the CS (MA) Rules, 1944: vide Ground 55 at page 92.

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5.That the Paragraphs 8 to 16 of the Respondent's Reply Affidavit deal with this Petitioner's treatment at the Escorts Hospital. This Petitioner-in-person has already dealt with all these points under his Grounds 17-28 at pages 57 to 70 of the Writ Petition. Even the directions of the Technical Standing Committee for rejecting this Petitioner's claim pertaining the implant of the CRT-D were the subject matters of this Petitioner's detailed submissions/ memorials addressed to;

(a) Representation dated 27/7/2014, to the Secretary Ministry of Health & Family Welfare: vide Annex P-6, of the Writ Petition.
(b) Memorial, dated 10/2/;2015, addressed to the Director General of the CGHS : vide Annex P -8 with the Writ Petition.

6.That this humble Petitioner deems his duty to submit before this Hon'ble Court that the Technical Standing Committee didnot act fairly. It never thought it proper to hear the Petitioner, or the eminent doctors who had performed the procedure, before rejecting this Petitioner's claim. They went against even the basic canon of medical decision-making {vide Grounds 17 to 20 (pages 57- 62 of the Writ Petition). The facts discussed in the Writ Petition made this Petitioner articulate his grievance thus in his said Ground 20 thus;

"**Ground 20.** For that on the date of implant, i.e. 11 November 2013, the CGHS had not prescribed any ceiling on the cost payable for the implant of the COMBO'S DEVICE PROCEDURE: CRT-D. Under such circumstances the CGHS was bound to pay whatever was the cost of that Device and procedure, at the market rate as on 11 November 2013, the day when this device had been implanted on this Petitioner.

This plea is supported by the following two points:

(i) as the treatment and the implant had been done under EMERGENCY, and this Petitioner had been "brought" to the hospital when the Petitioner was not his own decision-maker, and had no option to go by the doctors' instruction, Justice requires that the full payment be made of the medical expenditure incurred under emergency; and

(ii) as this is the effect of the reasonable construction of the then existing Circular: viz. O. M. [F.No. 2- 1/2012/CGHS/VC/C/CGHS(P) of 1/10/2012 being 'Clarification regarding admissible/ non-admissible items under CGHS' that says, in para 3, the following {see at p. 285 of this W.P.:

"<u>Cost of implants/ stents/ grafts is reimbursable</u> in addition to package rates as per CGHS ceiling rates for implants/ stents/ grafts or <u>as per actual, in case there is no CGHS prescribed ceiling r</u>ate."

[vide **Annex P-14 (g)** at page 285 of this W.P.]

7. That the Technical Standing Committee could have been corrected at the earliest if other supervisory authorities would have played their supervisory roles more effectively, and there would have been an Appellate Authority. This Petitioner submitted in his **Ground 55 at page 92** of the Writ Petitioner:

> **"** For that the authorities failed to discharge their duties fairly causing grave injustice to this Petitioner. When the Bill mentioned in paragraph 6 was rejected twice by the Standing Committee of the CGHS, this Petitioner submitted a Representation to the Ministry of Health & F.W. , and again a Memorial to the Director General of the CGHS for redressal of his grievance, but they failed to discharge their duties as the supervisory and appellate authorities which roles they were required to play under the existing administrative procedure, and also as required both by the Proviso to the Rule 3 of the CS (MA) Rules 1944 and the norms of Natural Justice. If they would have acted fairly, the Standing Committee would not have stuck to its erroneous views later on found by them themselves as erroneous. The Standing Committee was only a recommending body, the final order could be of the Central Government alone. It was also the duty of the appellate authorities to set right the wrong done by the Standing Committee as the Central Government, as the appellate authority, had full powers to consider this Petitioner's claims overriding the views of the Standing Committee. This power accrued to the Central Government by virtue of its being both the supervisory and appellate authority. As an appellate authority, it could examine issues afresh, and could have set aside the erroneous decisions sparing this Petitioner fromthis vexation of litigation,
>
> **<u>Exposition</u>**
>
> The Supreme Court observed in *Jute Corpn v CIT* [187 ITR 688] that in the absence of any statutory provision ..., the general principle relating to the amplitude of the appellate authority's power being coterminous with that of the initial authority should normally be applicable. "

8.. But in this context this Petitioner deems his duty to submit the following comments for this Hon'ble Court to consider:

(a) This Petitioner has found on the study of the operational structure of the CGHS (portrayed by the CAG in a chart which can be seen at page 243 of the Writ Petition), that the Technical Standing Committee is not a decision making body but it is only an advisory body providing input on account of its technical expertise. Observing the way they decided without hearing the Petitioner, without ensuring compliance with the norms prescribed in the Government's own Circular dated 14/11/2011, and without following the right protocol of medical decision-making, there are good grounds to believe that the Technical Standing Committee stuck unreasonably to the view taken in its first meeting evidencing the operation of a clogged mind that is not amenable to think that even Daniel can go wrong.

(b) This Petitioner is amazed to see how the technical input by the Technical Standing Committee was considered sacrosanct by the CGHS decision-makers. They should have appreciated that the role of the experts end with the provision of technical input, thereafter it is for the decision-makers to decide on the merits. If any authority is needed, this Petitioner would quote from page 599 of the *Criminal Law and Processes* by Kadish and Paulsen which relies on *US v. Brawner* 1972, 471 F. 2d 969:

" The experts add to perspective, without governing decision. The law looks to the experts for input, and to the jury for the outcome."

(c) This Petitioner submits that he would have been spared of all his drudgery and hardship, if the CGHS authorities would have heard him, or granted him an effective appellate review. If Petitioner would have been heard before decision, or appellate remedy would have been provided, he would have escaped this distressing experience that he has suffered over these months.

(i) See Grounds 33 to 39 pertaining to the breach of the Rules of Natural Justice.

(ii) See Ground 55 at page 92of the Writ Petition where this Petitioner has stated with candour:

"" The Standing Committee was only a recommending body, the final order could be of the Central Government alone. It was also the duty of the appellate authorities to set right the wrong done by the Standing Committee as the Central Government, as the appellate authority, had full powers to consider this Petitioner's claims overriding the views of the Standing Committee. This power accrued to the Central Government by virtue of its being both the supervisory and appellate authority. As an appellate authority, it could examine issues afresh, and could have set aside the erroneous decisions sparing this Petitioner from this vexation of litigation.'' The general principle is that " the general principle relating to the amplitude of the appellate authority's power being coterminous with that of the initial authority should normally be applicable.

9. It is saddening to see gross BIAS at work against this Petitioner, as it is evident in other cases studied by the CAG in his Report, especially the 7 cases tabulated at pp. 18-19 of this Writ Petition. The gravity of this has also been highlighted by this Petitioner in his Written Submission in its Section 9: the shocking part is highlighted in these words::

"Both the CS (MA) Rules, 1944, and the Articles 14 and 21 command the authorities not to take decisions adverse to someone without hearing him. In deciding this Petitioner's Case, these norms have been ignored deliberately as the authorities have convinced themselves that they are under no such duty as is evident from 2 things viz.:

(i) the fact that all the impugned decisions were made without hearing this Petitioner in utter breach of the Rules of Natural Justice; and

(ii) the wrongful omission of the Proviso to the Rule 3(2) of the CS (MA) Rules, 1944, as it is seen on its text on the Website of the Ministry of Health.

The CGHS and the authorities of the Ministry of Health & Family Planning erred in NOT complying with the Rules of Natural Justice not by oversight, or mistake but deliberately suggesting gross BIAS at work. The text of the CS (MA) Rules 1944, as we get on the website of the Ministry of Health and Family Welfare, has omitted the Proviso to the Rule 3(2) of the CS (MA) Rules 1944: vide the text as it is at http://www.mohfw.nic.in/index1.php?lang=1&level=1&sublinkid=1872&lid=1704

and again at http://www.mohfw.nic.in/showfile.php?lid=1782.

True, the text on the internet, bears in its title the expression 'in brief' but that does not lessen the sinister effect of the omission of the Proviso to the Rule 3(2) of the CS (MA) Rules 1944. This omission might have misled the CGHS and the authorities of the Ministry of Health to believe that they were under no duty to hear this Petitioner, or even to communicate reasons seeking response before arriving at adverse decision against this claimant. Such an omission cannot be a mere mistake: more so when the CGHS believes that its decisions cannot be questioned[10]."

10. That this Petitioner finds it amusing to read the Respondent's Reply relying on the Circular of the 14th November 2011 which purports to "Streamlining of Procedures for disposal of Medical Reimbursement (MRCs) in the CGHS (vide Annex A-1 to the Respondent's Reply-Affidavit). This Petitioner has gone through it carefully, and is constrained to submit the following:

(i) Whilst by getting himself " treated at the un-empanelled hospital in emergency condition" this Petitioner has acquired right to "get reimbursement of medical expenses incurred by themselves or any of their dependent family members", this Respondent is hesitating in discharging its obligation to honour its own instruction on which it is now relying with reference to Annex A-1 to the Respondent's Reply-Affidavit.

(ii) This Petitioner discharged its duty, as required by the said Circular, by submitting all his Medical Bills to the CGHS Wellness Centre , and as they accepted them without objections, this Petitioner was satisfied that they found the claim papers in order.

(iii) This Petitioner is not aware of any reference from the Office of AD/JD, back to CMO-I/C to remove any shortcoming in the Bills so there was no need on any count to do anything to remove any deficiency "in consultation with this beneficiary".

(iv) The Circular, on which the Respondent relies, requires that the CMO-I/C "shall contact the beneficiary concerned and inform him about the shortcomings in the MRC papers and request him to submit the requisite information/ documents". This Petitioner never received any query from the CMO I/C. It means that the Petitioner's claim was in order.

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[10] " On behalf of the respondent No. 1 it is argued that the petitioner is governed by the CCS (MA) Rules, 1994, of which the Rule 8 states that that the decision of the Government as to Medical Attendance for treatment is final...." [*Daljit Singh v.. Govt. of N.C.T. Of Delhi* 2013 (199) DLT 24 para 2]

(v) The Circular requires Office of AD/JD to scrutinize the Bills (MRCs) "as far as possible through computerized software as per the extant policy and instructions issued from time to time about the CGHS rates and admissibility of claims under CGHS." The Circular requires:

> "When a bill is sent to the PAO, the details pertaining to the claimant will be entered through computer and the claimant shall be informed of the same along with bill number, amount admissible and details of disallowances clearly indicating the specific reasons/ grounds for deductions." (sub-para vii)

This Petitioner submits that he was never informed about anything in the matters pertaining to his Bills, or the treatment he underwent at the Fortis Escorts or at the Jaslok Hospital.. To say in brief, the CGHS has itself ignored directions on procedural propriety as set forth in the Circular dated of the 14th November 2011, which now the Respondent has chosen to make an Annex A-1 to its Reply-Affidavit.

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PART 3:

11. Apropos para 8 of the Respondent's Reply, it is true that on the date of treatment in emergency, the Escorts Heart Hospital was "Non-empanelled". It was earlier empanelled, and this Petitioner's had got almost full medical reimbursement even after his retirement. For a short while, this hospital was not empanelled by the CGHS but it has been again empanelled now [vide Government of India's Officer Order of 16th Nov, 2015]. Asthe NABH Accredited hospitsl empanelled by the CGHS with effect from 16.11.2015 This Petitioner submits on this point taken in the Respondent's Reply Affidavit:

(a) Emergency treatment at a private, non-recognised hospital; Held entitled because of medical emergency, *Suman Rakheja v. State of Haryana* (2004) 13 SCC 563

(b) "The plea of the Government that he has not taken prior sanction for treatment in non-C.G.H.S. Hospital is clearly erroneous and cannot be entertained." *Narendra pal Singh v. UoI* 1999(79) DLT 358:

(c) These are no grounds which would disentitle the petitioner from receiving the health benefits which are integral to right to life. EHIRC happens to be an empanelled hospital presently.[11] Even if at the relevant time, it was not an empanelled hospital as urged by the respondent and treatment had been received there without reference by the Government official, the petitioner would be entitled to reimbursement of medical expenses, in any case, as per the CSMA Attendant Rules and rates. (Para - 14)*Mahendra Pal v. U*oI 117(2005) DELHI LAW TIME 204.

(d) Petitioner was government employee and holder of CGHS card - Petitioner entitled for reimbursement in case of treatment taken under government empaneled hospital - Petitioner compelled to take treatment at non empaneled hospital due to emergency - Non empanelled hospital in which Petitioner took treatment was at par with empanelled hospitals -Denial of reimbursement not

[11] at the material time the "EHIRC was not an empanelled hospital." vide para 6 of *Mahendrapal* (read with para 14)

justified - Petitioner entitled for reimbursement - Petition allowed. *Jai Pal Aggarwal v. UoI* MANU/DE/2861/2013

(e) "The Government was obliged to grant *ex post facto* sanction in case an employee requires a speciality treatment and there is a nature of emergency involved. **In such a situation, treatment in a non-recognized hospital and non-observance of prescribed procedure and incurring expenditure in excess of CGHS package/approved rates have to be condoned**." [*V. B. Jain's Case*[12]]

(f) "The petitioner in this case had to be operated in an emergency as he suffered a heart problem and in case he had waited for a prior sanction he might not have survived. Therefore, in this situation it is the duty of the Government to grant ex-post facto sanction and not deny the claim of the petitioner on technical and flimsy grounds."*Narendra Pal Singh v. Union of India*[(1999) DLT 358, para5

(g) "It is settled legal position that the Government employees during his time or after his retirement is entitled to get the benefit of medical facilities and no fetters can be placed on his rights...." A case of retired officer--Even if at the relevant time, it was not empanelled hospital, petitioner would be entitled to reimbursement of medical expenses, as per CSMA Attendant Rules and rates." *Kishan Chand v. Government of N.C.T.* 210 (169) DLT 32

(h) "**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."** (emphasis supplied) *E. Ramalingam v. The Director of Collegiate Education* (2006) 3 M.L.J.641; Quoted with approval in *C. Ganesh v. Central Administrative Tribunal* 9(2012)5 Mad LJ 257

12. Apropos para 9 in the Reply Affidavit the Respondent mentions that he underwent the procedure of angiography on 12.11.13 which revealed diffused disease in left anterior descending coronary artery 50-60%. This paragraph, neither in itself nor in the context other assertions in the Reply, carries any relevance, or sense. It may have a bearing on the propriety of the medical decision to implant CRT-D on the Petitioner whilst in the emergency of the Escorts Hospital.This Petitioner has dealt with all relevant aspects of the CRT-D implant in his Grounds, esp. Grounds 1-28 at pages 45--70; .also in his Representation dated 27/7/2014, to the Secretary Ministry of Health & Family Welfare: vide Annex P-6, of the Writ Petition , and Memorial, dated 10/2/2015, addressed to the Director General of the CGHS: vide Annex P -8 with the Writ Petition. The Medical History of this Petitioner from 1789 to 2014 (vide Annex P-10 with this Petitioner's Writ Petition) outlines hismedical parameters which the eminent doctors who performed the implant, knew full well.

13. Apropos para 10 deserves no response because it merely states what had happened and as the impropriety of which this Petitioner had moved , as said, for justice to the Secretary Representation dated 27/7/2014, to the Secretary Ministry of Health & Family Welfare: vide Annex P-6, of the Writ Petition. And a Memorial, dated 10/2/;2015 addressed to the Director General of the CGHS. .

[12]*V.B. Jain v. Chief Executive Officer, Delhi Jal Board* O.A. No. 2954/2012, Reserved on : 22.05.2013 Pronounced on :25.07.2013 [Central Administrative Tribunal, Principal Bench, New Delhi]

14. Apropos para 11 of the Respondent's Reply Affidavit: the Respondent states thus:

> "The hospital had charged an amount of Rs. 11,56,293/- out of which an amount of Rs. 10,70,000/- is for the cost of the unlisted cardiac implant (CRT-D). An amount of Rs. 3,19,950/- was paid by the insurance company directly to the hospital."

The above figures are admitted as correct, but it is submitted the CGHS should reimburse the cost of the Carelink also which was purchased under medical instruction mentioned by the doctor in the Discharge Summary issued by the Escorts Heart Hospital vide page 126 of the Writ Petition, the evidence of its purchase at page 141 of the Writ Petition. This Petitioner has already made out his case in the Ground 29 at page 70 of the Writ Petition. If the cost of the Carelink at Rs 150000/ is added to the claim it precisely comes to the figure as shown at page 4 , and again at 42 . This had been clearly explained in this Petitioner's letter forwarding his Escorts Hospital Bill to the Additional Director, CGHS[13]. . The net effect of the calculation done by the Respondent is that it does include the price of Carelink when it had been purchased as advised in the Discharge Summary, and its salutary effect got demonstrated in the case of the Petitioner as mentioned in the Ground 29 at page 70 of the Writ Petition. As this Petitioner had been treated at the Escorts Hospital in emergency he had just to act as advised by the treating doctor. So the Bill pertaining to treatment at the Escorts Hospitals came to Rs 986343 out of a sum Rs 490000/ was paid on 31 /3/2015 by the CGHS direct to this Petitioner, and further Rs 300000/ in pursuance to this Hon'ble Court's order: thus the net surviving claim pertaining to the treatment at the Escorts Hospitals comes to Rs 196343/ only. This is in addition to the claim of Rs 303212/ pertaining to treatment in the Emergency at the Jaslok Hospital . Hence the total amount payable to this Petitioner comes to Rs 499555 only (being the aggregate of Rs 196343 + Rs 303212).

15. Apropos paragraphs 12 to 14 of the Respondent's Reply-Affidavit, theseparagraphs and the Annexures A--5 and A--6 go to suggest the the Standing Committee considered this Petitioner's Case but found that the circumstances did not warrant the implant the CRT-D on this patient,

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[13] "The cost of the treatment and procedure at the Hospital came to Rs. 1156293 from which was deducted a sum of Rs. 319950 as this sum was paid on my behalf by M/S Focus which works as the TPA of the National Insurance Company Limited with which I am insured under my Mediclaim Policy No. 354301/48/12/8500004297. Hence the net Bill came to Rs. 836343 which I paid at the time of discharge by Cheque No. 313281 dated Nov. 14, 2013 drawn on the Corporation Bank, Sarita Vihar, Mathura Road, New Delhi-76. Further, as advised in the aforesaid Discharge Summary, CARELINK FOR REMOTE MONOTERING was installed at my place by the medical equipments supplier for Rs 150000/ which sum I paid by Cheque No. 313282 dated Nov. 18, 2013 drawn on the Corporation Bank, Sarita Vihar, Mathura Road, New Delhi-76. Its original Bill and Receipt are enclosed herewith. Hence total net claim payable by the CGHS to me come to Rs. 986343 (Rupees Nine Lakhs Eighty-six thousand and Forty-three only)."

now the Petitioner before this Hon'ble Court. This Petitioner has already mentioned in paragraphs in the PART 1 of this Response, how such rejections were wholly arbitrary and irrational.

16. Apropos para 15 of the Respondent's Affidavit in Reply, the figures are correct to the extent they go, but the quantum of gross claim is Rs 1554390 is incorrect as to it has been added the cost of the Carelink at Rs 150000. Hence the gross claims come to Rs. 1704390/ rather as shown by the Respondent at only Rs 15,54,390/.

17. Apropos para 16 of the Respondent's Reply-Affidavit, this Petitioner submits that the reasons for paying Rs 490000/ to the Petitioner on31/3/2015 was not deserved payment towards the reimbursement of legally accrued claim which the Government was obliged under law to pay, but a sort of administrative clemency bordering on charity because this Petitioner had undergone treatment under emergency conditions. The Competent authority had approved the reimbursement "keeping in view the emergency nature of the case of the petitioner, approved the reimbursement of the case of the petitioner.......as per AIIMS rate." This Petitioner tenders his candid apology if this Petitioner's comments, in tone tenor or nuance, are found unbecoming of an ordinary citizen who also happens to be an advocate of the Supreme Court Bar. This paragraph causes a lot of agony in this Petitioner's mind for reasons a few of which he deems it proper to state as under:

(i) The heart of my claim was my <u>accrued legitimate right</u> to get from our Government what was due to me, not a paisa less, nor a paisa more. This Petitioner would be happy to lose his claim rather to have it honoured, in part or full, as a matter of anybody's charity even if that person is the Government of India which this Petitioner served, wholly unblemished, for more than 3 decades.

(ii) The only point under consideration before the authorities was to determine whether this Petitioner's emergency was *genuine, or fake*. The Proviso both to Rules 3 and 6 of the CS (MA) Rules, 1944 are couched in the similar words. Rule 3 deals with Medical Attendance, and Rule 6 pertains to Medical Treatment. The Provisos to both the Rules are in identical words:

"Provided that the Controlling Officer shall reject any claim if he is not satisfied with its genuineness on facts and circumstances of each case, after giving an opportunity to the claimant of being heard in the matter. While doing so, the Controlling Officer shall communicate to the claimant the reasons. In brief, for rejecting the claim and the claimant may submit an appeal to the Central Government within a period of forty-five days of the date of receipt of the order rejecting the claim."

No claim has legs to stand upon if it is fake, or not genuine. If the finding is that the claim is not genuine, then such a finding itself can be examined to see if it was arrived at after satisfying the requirements of Natural Justice. In case the Controlling Officer rejects the claim for being not genuine it must provide an effective appellate remedy. Where no appellate remedy is provided, the aggrieved person is free to move this

Hon'ble Court under Article 32 of the Constitution OF India. If the Controlling Officer finds the emergency genuine, and does not consider the implant a collusive arrangement *inter se* the patent, the doctors and the hospital, he has no option but to honour the whole Bill gracefully.

(iii) It is shocking that one be treated at X institution but reimbursed at the rate of Y institution. The Rule 6 that contemplates treatment under emergency, and both the Circulars which the Respondent has appended as AnnexuresA-1 and A-3 prescribeno overriding condition. Besides, to impose this condition would be an arbitrary act to deprive the efficacy of the emergency treatment at the nearest appropriate hospital. It is simply unthinkable how else one can act under Type II or Type III emergency situation, where one is not capable to decide what course to adopt, and is wholly at the mercy of others. .

(iv) This Petitioner has reasons to believe that the Respondent is not stating true facts. The implant of the CRT-D is a new invasive therapy invented recently. . This is a new therapy of the 21st century. Its sophisticated equipment is manufactured only by two or three manufacturers in the world. This Petitioner has discussed about this therapy in his Writ Petition, and has also enclosed a learned paper as Annex P-14 (f) at pages281-284 of the Writ Petition. When this Petitioner was advised to undergo this therapy, he was for sometime eager to find out ways safer than this. It is in this quest he consulted Pada=Shri Dr Balbir Singh of the Medanta Hospital, a super speciality hospital of high distinction. He too advised the CRT-D.. I gathered there that it was a hospital empanelled by the CGHS. That hospital supplied this Petitioner a quotation for the cost of the CRT-D implant. This quotation is Annex P-3 at page 142 of the Writ Petition. This Petitioner has submitted with reference this Quotation at several places in his Writ Petition. . This Petitioner draws this Hon'ble Court's attention mainly to Grounds 21 and 22:

" **Ground 21.** For that the CGHS has erred in reimbursing to this Petitioner the cost of the device only at Rs 490000 when this Petitioner had to pay to the Escorts Hospital the cost of the device at Rs. 1075100, which was enhanced by the cost of the procedure. They missed to notice that the Discharge Summary had stated in capital letter: COMBO'S DEVICE PROCEDURE : CRT-D (Protecta XT CRT-D) D354TRM done on 12/11/2013 for which the CGHS had not framed CEILING RATE on the date the device was implanted on this Petitioner. At that time the cost of the device, at the Medantaa Hospital, recognized by the CGHS, had been quoted at Rs, 865545 being the aggregate of :

COMBO's Device Procedure	Rs 55545/
Cost of the Device	Rs 800000/
Misc.	Rs 10000

[vide Annex P- 3' at page 142 of this W.P.]

Ground 22. For that the cost of the CRT-D deserves to be reimbursed. The CGHS had not fixed its ceiling rate on the date of implant, i.e. on 12 November 2013. This Petitioner had got a quotation from the **Medantaa Hospital** showing that as on 21 September 2013, its cost for the CGHS beneficiary was Rs 800000/ [vide **Annexure P-3 at p. 142 of the W.P.]**. The **Medantaa Hospital** is recognized by CGHS for the treatment of cardiac ailments. The CGHS should have reimbursed the Petitioner at the open market rate, or, at least, as quoted at the Medantaa Hospital, adding to that the cost of procedure.

Exposition

The following 3 points deserve to be kept in view:

(i) that the CGHS must pay the price of the device that the doctors planted on this Petitioner in medical emergency the genuineness of which is now admitted by the CGHS itself;

(ii) that the CGHS has found this Petitioner's claims so justified that it has already relaxed the rules of procedure to grant the claim but has acted arbitrarily and unfairly by not granting the full claim;

(iii) Any decision as to the cost of the device, taken by the CGHS must be based on the facts as operative on the day of implant, i.e. 12 November 2013 when the CRT-D had been implanted on this Petitioner. And as the Medantaa Hospital is a CGHS recognised hospital for the treatment of cardiac ailments, the rate quoted by it as the cost for implant on a CGHS beneficiary, deserved to be treated as the cost reimbursable to this Petitioner "

(v) This Petitioner stated Grounds 23-25 howthe procedure was unique and aggressive. This therapy illustrates the pioneering leaps in modern medical sciences. Madras High Court appreciates such medical leaps when succinctly it says in *E. Ramalingam v. The Director of Collegiate Education* (2006) 3 M.L.J.641 {Quoted with approval in *C. Ganesh v. Central Administrative Tribunal* 9(2012)5 Mad LJ 257}:

"In recent days, the concept of treating ailments, has advanced so much, thanks not only to the speciality hospitals, doctors specialized in the modern/advance treatments, but also the advanced techniques in method of treatment with use of sophisticated equipments. 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 expertise both on academic qualifications and experience gained. Very little scope is left to the patient or his relative to decide as to manner in which the ailment should be treated"

This approach goes with modern medical science's innovative approaches an analogue of which had been appreciated by Judge Manfred Lachs of the International Court of Justice in *the North Se Continental Shelf Case* ICJ 1969, 3 at 222: he said--

"Whenever law is confronted with facts of nature or technology, its solution must rely on criteria derived from them. For law is intended toresolve problems posed by such facts and it is herein that the link between law and the realities of life is manifest. It is not legal theory which provides answers to such problems; all it does is to select and adapt the one which best serves its purposes, and integrate it within the framework of law[14]."

(vi) The Respondent has not quoted the specifics of the device for which this Petitioner could have gone to the AIIMS to see if that conforms to the best specifications device available. . Who will risk going in for the implant of a life saving device which is not widely tested and professionally approved. This Petitioner was admitted at the Escorts Hospital in critical conditions. He had no option but to allow the internationally reputed doctor to go ahead. Even in this Reply Affidavit, the Respondent does not mention the specifics of the CRT-D device for which AIIMS is charging so less. In life threatening situation, one cannot indulge in wild goose chase. The argument of the Respondent deserves to be rejected as the Hon'ble Delhi High Court had done some analogous submission of the Government of India in *UoI v. J. P. Singh* 2010 LIC 3383:

"17. It is urged by learned counsel for the petitioner that the actual grievance of the petitioner is not that the respondent rushed his wife to Apollo Hospital but to the fact that a permanent pacing was done. Counsel states that the objection of the petitioner is to the fact that temporary pacing ought to have been got done for the reason it costs less money and thereafter permission ought to have been taken for implanting a permanent pacemaker and for which the competent authority would have seen whether the said procedure could be performed at a Government hospital, where we presume it would have cost less.

18. This plea is negated by us for the reason once a patient, and that too in a critical condition, is in the hands of an expert doctor, what medical treatment has to be given is a decision of the doctor concerned.

19. It cannot be lost sight of the fact that the wife of the respondent required a pacemaker to be inserted. Everybody knows that intervention into the body causes distress and therefore it is not advisable to repeatedly resort to such procedures which require an intervention into body. The medical papers of the wife of the respondent shows that she was 62 years of age as on the date when she underwent the interventional surgery of implanting a pacemaker and thus it is quite obvious that the specialist doctor thought that rather than resorting to a temporary pace-making, it would be better if permanent pace-making was resorted to.

20. Thus, we hold that the respondent would be entitled to reimbursement for the medical expenses pertaining to the medical illness of his wife."

(vii) The idea of the Respondent to pay the cost of treatment taken in the emergency at the Escorts Hospitalat the rates of the AIIMS is ex facie as unreasonable as was found a similar suggestion in the past by the Hon'ble Supreme Court in *State of Punjab v. Mohinder Singh Chawla*JT 1997 (1) S.C. 416, cited in *Narendra pal Singh v. UoI* 1999(79) DLT 358 : to quote—

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[14] J.G Starke's *Introduction to International Law,* 10th ed. P. 178

“10. It is contended for the State that though the Government had granted *ex-post facto* sanction through the Medical Board and permitted the patient to undergo treatment outside the State with the policy, for reimbursement of medical expenses incurred and the medical treatment taken in the Hospital to the Government servant/pensioners or dependents, as per rules, the Government has imposed a condition to pay room rent at the rates charged by the AIIMS for stay in the hospital. The reimbursement will be given at those rates. The Government, therefore, is not obliged to pay the actual expenses incurred by the patient while taking the treatment as inpatient in the hospital, for rent.

11..... . . Consequently, when the patient was admitted and had taken the treatment in the hospital and had incurred the expenditure towards room charges, inevitably the consequential rent paid for the room during his stay is integral part of his expenditure incurred for the treatment. Consequently the Government is required to reimburse the expenditure incurred for the period during which the patient stayed in the aproved hospital for treatment. It is incongruous that while the patient is admitted to undergo treatment and he is refused the reimbursement of the actual expenditure incurred towards room rent and is given the expenditure of the room rent chargeable in another institute whereat he had not actually undergone treatment. Under these circumstances, the contention of the State Government is obviously untenable and incongruous. We hold that the High Court was right in giving the direction for reimbursement of a sum of Rs. 20,000/- incurred by the respondent towards the room rent for his stay while undergoing treatment in Escorts Heart Institute, New Delhi."

In *Surjit Singh v. State of Punjab & Ors*. (1996) 2 SCC 336, OUR Spreme Court has approved the approach and observations of the Divison Bench in *Sadhu R. Pall case*: to quote—

“"The respondents appear to have patently used excuses in refusing full reimbursement, when the factum of treatment and the urgency for the same has been accepted by the respondents by reimbursing the petitioner the expenses incurred by him, which he would have incurred in the AIIMS New Delhi. We cannot lose sight of factual situation in the AIIMS New Delhi, i.e. with respect to the number of patients received there for heart problems. In such an urgency one cannot sit at home and think in a cool and calm atmosphere for getting medical treatment at a particular hospital or wait for admission in some Government medical institute. In such a situation, decision has to be taken forthwith by the person or his attendants if precious life has to be saved."

We share the views afore-expressed.”

(viii) The Respondent has not countered this Petition’s contention in his Ground 20 that on the date of implant, i.e. 11 November 2013, the CGHS had not prescribed any ceiling on the cost payable for the implant of the COMBO'S DEVICE PROCEDURE: CRT-D. Under such circumstances the CGHS was bound to pay whatever was the cost of that Device and procedure, at the market rate as on 11 November 2013, the day when this device had been implanted on this Petitioner. This Petitioner further mentioned:

“This plea is supported by the following two points:

(i) as the treatment and the implant had been done under EMERGENCY, and this Petitioner had been "brought" to the hospital when the Petitioner was not his own decision-maker, and had no option to go by the doctors' instruction, Justice requires that the full payment be made of the medical expenditure incurred under emergency; and

(ii) as this is the effect of the reasonable construction of the then existing Circular: viz. O. M. [F.No. 2- 1/2012/CGHS/VC/C/CGHS(P) of 1/10/2012 being 'Clarification regarding admissible/ non-admissible items under CGHS' that says, in para 3, the following {see at p. 285 of this W.P.:

> "Cost of implants/ stents/ grafts is reimbursable in addition to package rates as per CGHS ceiling rates for implants/ stents/ grafts or as per actual, in case there is no CGHS prescribed ceiling rate."

[vide **Annex P-14 (g)** at page 285 of this W.P.]"

The Respondent deserves to be commanded to pay for the cost of the CRT-D at market rate as promised in the Government's own Circular: viz. O. M. [F.No. 2-1/2012/CGHS/VC/C/CGHS(P) of 1/10/2012 quoted above.

18. Apropos para 17 in the Respondent's Affidavit in Reply, these two payments, one by the insurance company direct to the Escorts Hospital, and the other to this Petitioner in obedience to the Hon'Ble Court's order, are admitted. This Petitioner had himself done that adjustment in his Writ Petition, and had annexed the same circular as Annex P-14(d) at page 276 of the Writ Petition.

19. Apropos the para 18 of the Respondent's Reply, the Petitioner disputes the quantum of net claim reimbursable to him as on now. The position is brought out through the following table.

Bills submitted on	**Amounts of Paid**	**Amounts outstanding**
(a) Bill for treatment at the Escorts Heart Hospital, New Delhi, submitted on January 01, 2014 for Rs. 986343	Rs. 490000 paid on 31/3/ 2015 Rs 300000 paid under the order of the Hon'ble Sup. Ct. On 16 Feb. 2016	Rs. 196343
(b) Two Bills for treatment at Jaslok Hospital, Mumbai, submitted on July 19, 2014 for Rs. 398097	Rs, 94885 paid on 25/8/t 2014	Rs. 303212
	Amount yet to be paid to the Petitioner	Rs. 499555.

20. Apropos para 19 in the Respondent's Affidavit in Reply, the Respondent contend two points:

(i) The case of the petitioner has been dealt with in accordance with the Circulars and the Office Memorandums issued by the Ministry of Health from time to time.

(ii) The petitioner cannot be given any special treatment beyond the terms of the circulars which would amount to violation thereof and would lead to arbitrariness and discrimination qua a large numbers of such like beneficiaries.

As to point at (i) above: this petitioner submits that where there is an entitlement of get the medical benefit, the Government is duty-bound to comply with the requirement. No circular or Office Memoranda can negate the legal obligations of the Government, and no administrative instruction can go against the accrued legal interest of the beneficiaries who are entitled to the benefit of medical reimbursement as a matter of legal right. The benefit accrues to the retired Government servants on account of the ensemble of the Rules 3 and 6 of the CS (MA) Rules, 1944; the Doctrine of Legitimate Expectation; and the protection under the Fundamental Rights of Articles 21 and 14.This Petitioner has already submitted on this aspect of the matter both in his Writ Petition and in his Written Submissions that goes as Annexure A to this Response of the Petitioner to the Respondent's Affidavit in Reply. Some supporting judicial dicta are quoted hereunder:

"It is settled legal position that the Government employees during his time or after his retirement is entitled to get the benefit of medical facilities and no fetters can be placed on his rights...." . "Under Article 21 of the Const. the State has a constitutional obligation to bear the medical expenses of Government employees while in service and also after they are retired." *Kishan Chand v. Government of N.C.T.* 210 (169) DLT 32

Held, 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 on the pretext that he has not opted to become a member of the scheme or had paid the requisite subscription after having undergone the operation or any others medical treatment-Under Article 21, the State has a constitutional obligation to bear the medical expenses of Government employees while in service and also after they are retired-Petition allowed. *Suraj Bhan v. Govt. of NCT of Delhi* ILR(2010)IV DELHI 559

"A writ of mandamus is thus issued directing respondents to examine the case of the petitioner for reimbursement of medical expenses and to reimburse the same to the petitioner on the basis that the petitioner is entitled to reimbursement of medical expenses as a retired Government servant." (para 16)*S.K. Sharma v. UoI* ILR(2002) I DELHI 709

This Petitioner attaches an Appendix to this Reply to show how the retirees of the type of this Petitioner, are entitled to FULL Reimbursement of the medical claim. Vide Appendix at pages 28-38

As to point (ii), this Petitioner submits that the Respondent's plea is *ex facie* baseless, unfair, and irrational.

21. Apropos para 20 of the Respondent's Affidavit in Reply, the contentions are wholly misconceived, and devoid of any merit.

22. Apropos para 21 of the Respondent's Affidavit in Reply, the Respondent has stated:

> "That the answering respondent has to deal with large number of such retired CGHS beneficiaries and if the petitioner is compensated beyond the policy, it would have large scale ramification as none would follow the procedure to approach the empanelled hospitals and would rather choose private hospital as per their own free will. It cannot be ignored that such private hospitals raise exorbitant bills subjecting the patient to various tests, procedures and treatment which may not be necessary at that stage. "

This averment of the Respondent is just a potpourri of surmises, baseless allegations, unfounded insinuations, trying to erect a spectre of dread that the CGHS beneficiaries can even become the looters for gaining unjust benefits. It casts certain aspersions on the private hospitals that is so sweeping that they have become shocking. As this Petitioner has submitted in paragraph 13 of his Writ Petition, it is the Government of India (Allocation of Business) Rules, 1961 that casts duty to provide medical succour to the Central Government Servants by a specific command at Sr. No. 14 in the Government of India (Allocation of Business) Rules, 1961. The President of India had framed the Government of India (Allocation of Business) Rules, 1961 in exercise of powers granted under Article 77(3) of our Constitution. The duties cast under this cannot be modified by any Office Memorandum, or circular. This is the effect of observations of Patna High Court in *Dinesh Roller Flour Mill & Anr. vs. UoI & ORS* AIR 1983 Patna 293 (Ranchi Bench) (para 15)[15] The President also prescribes the constitution of the Indian Medical Council for setting up which the Indian Medical Council Act was enacted. The President of India has cast duty to oversee the Indian Medical on the Ministry of Health & F.W. . No hospital can work without a licence from the Medical Council, and no doctor can practice without obtaining registration number from this Council. The Act has a comprehensive mechanism to investigate into the remissness on their part. It provides an inquiry by a committee headed by a former High Court Judge. Besides, all the provisions of the Law of Crimes are available to the Government to impose the discipline of propriety to control and supervise acts by patients, doctors, or hospitals if they resort to fraud. Our Government is competent to frustrate any unworthy collusive conduct on the part of the beneficiaries, or the benefit providers. It is amazing, that instead of acting to assist old and ailing retired public servants, the CGHS is just crafting a plea to evade their duty onwoolly grounds over-brimming with surmise and suspicion for which none other than the Government itselfdeserve to be blamed. .

[15]The rules so framed have nothing to do with the rules framed by the President under Art. 77 (3) of the Constitution. By amending the rules of allocation of business, the President has exercised power vested in him by the Constitution. By legislative enactment., that is by Industrial Undertakings Rules, the constitutional power of the President cannot be curtailed. The rules framed under Art. 77 (3) of the Constitution must prevail over Industrial Undertakings Rules. That being the position it must be held that the Ministry of Agriculture. Department of Food, Government of India, was competent to pass the order as contained in Annexure 9."

23. Apropos Para 22 the Respondent's Affidavit in Reply, this Petitioner has no comment, but he seeks from the Hon'ble Court permission to elaborate and supplement what he has said on all the points in this Response.

PART 4

Re. The Jaslok Hospitals Bills: exploring the zone of the Respondent's silence

24. The Respondent has chosen to venture no comment in its Reply Affidavit on this Petitioner's submissions relating his claims pertaining to the Bills issued by the Jaslok Hospital for the Petitioner's emergency treatment for cerebral stroke and paralysis. This Respondent's total silence suggests that the Respondent admits all facts mentioned by this Petitioner, and accepts the claim made. The Jaslok Hospital was for long a CGHS-empanelled hospital[16] But as the Respondent has not admitted the claim specifically, nor has it denied, or questioned the claim even by implication, this Petitioner, with utmost brevity, would deal with his this claim by referentially importing facts from his Writ Petition seeking this Hon'ble Court's leave to develop and substantiate all his points pertaining to the his with reference to the facts and papers already in the Writ Petition, and those relevant to such contentions. .

25. The treatment at the Jaslok Hospital, Mumbai, was in the Petitioner's emergency conditions. Out of the total claim pertaining to this at Rs 398097 submitted by this Petitioner on 19 July 2014, the CGHS has paid electronically only Rs 94885/ leaving the balance amount payable to him at Rs. 303212/ only. [**Vide paragraph 43** of the Writ Petition at its page no. 42]**.**The original two Bills had been submitted to the CGHS on July 19, 2014 explaining the circumstances under which the medical claim originated (vide Annex P-5 at the Writ Petition pages 176-212). The circumstances under which a part payment on these Bills had been made are stated in the Annex P.-7 at page 213 of the Writ Petition.On January 20, 2014, this Petitioner wrote to the CGHS thus (P-7 at pages 213-215 of the Writ Petition):

> **"**To this date , I have not received any communication pertaining to the aforementioned two bills, but very recently, on getting my Bank Pass-book updated (A/C No. 0600/CLSB/01/010024 with the Corporation Bank, Sarita Vihar, New Delhi-76) I have noticed two deposits on 25 August 2014 sent by NEFT with the following details:

Date	Entry in the Passbook	Credit
25/08/2014	NEFT from MHFW PAYMENT A C Ref : BARBC14237300177 Dt:25 SI:000052 Orgn :	53056

[16]http://www.gconnect.in/orders-in-brief/cghs/list-of-private-hospitals-recognised-under-csma-rules.html#

	BARBOSERDEL	
25/08/2014	NEFT from MHFW PAYMENT A C Ref : BARBC14237300178 Dt:25 SI:000053 Orgn : BARBOSERDEL	41829

....

I make it clear to you that before this event of your deposits in my aforementioned bank accounts, I have got no information of any sort, nor I ever received any query on any point on the matters pertaining the said two bills.

As I have the right to know how my medical bills were treated, processed, and the amounts payable have been worked out, I request you to let me have comprehensive and documented information on the following points:

1. The orders (along with reasons) passed on my aforesaid two bills. at their stages of scrutiny and processing, at your end, after the submission of my said bills.

2. Details to show how the individual items of claims in the aforementioned two bills have been treated individually to see how and why and where they differ so widely from the figures claimed in the bills. You are requested to furnish appropriate details, with reasons, which led you to dispose of the bills aggregating to Rs. 398097/ by paying only Rs. 94885 (being Rs. 53056 + 41829).

When you answer the point 2 above, please mention your basis/ground/reason for so doing so that I may feel assured that I have been fairly treated, and no injustice has been done to me. and the rule of low has not subverted."

26. This Petitioner has dealt with the material aspects of his claim pertaining to his treatment at the Jaslok Hospital at several places in his Writ Petition. For the sake of convenience they are summarised hereunder leaving an option to this Petitioner to develop and substantiate them in course of his arguments:

(i) Facts pertaining to the Petitioner's treatment at the Jaslok Hospital, Mumbai

Paragraphs 35-41 at pages 36 to 41.

(ii) Grounds pertaining to the Jaslok claim

Grounds 30-32 at pages 71 to 72 of the Writ Petition.

(iii) Facts set forth in this Petitioner's Medical History attached with the Writ Petition

Annex P-10 at pages 235 to 237 of the Writ Petition.

27. This Petitioner thinks he is under no duty to try to discover the meaning of the Respondent's total silence. Only point that he can state is that the CGHS was non-responsive to this Petitioner's requests whenever made to know about his claims, the CGHS :

(a) never granted the Petitioner any opportunity to be heard in disposing of his claim;

(b) never communicated to the Petitioner the reasons for slashing down the claim to almost one-fourth;

(c) the CGHS provides no appellate review of of its actions going adverse to a citizen's interest.

Hence it is submitted that the CGHS be directed to pay the outstanding amount of the claim at Rs 303212/ to this Petitioner.

28. This Petitioner would, without prejudice to his contention that he is entitled to the whole claim for reimbursement for his emergency treatment at the Jaslok Hospital, this Petitioner invokes the Hon'ble Delhi High Court's decision in *Jai Pal Aggarwal v. UoI* MANU/DE/2861/2013. In this Case, the full reimbursement was refused. The Respondent held that "since Medantaa Hospital was not empanelled at the time the petitioner took treatment there"" he was entitled to be reimbursed only as per CGHS Package Rates. The Hon'ble High Court, after examining all the relevant facts and circumstances, felt that the Medanta Hospital was a super-speciality hospital accredited by the National Accreditation Board for Hospitals and Health Care providers (NABH). After explaining the circumstances in which the treatment had been taken at the non-empanelled Medanta Hospital, the Hon'ble High Court allowed[17] the Petitioner's Writ Petition directing the respondents "to reimburse the petitioner at the package rates approved by CGHS for its empanelled super-speciality hospitals as on 22.7.2011."

29. This Petitioner, in the context of the Delhi High Court's decision in *Jai Pal Aggarwal v. UoI*, would submit that the hospital whereat he was admitted in the unconscious stage after his cerebral stroke and left side paralysis was also a Super Speciality to which this Petitioner was entitled to go. He was entitled to his appropriate grade of treatment by virtue of his retirement from the post of the Chief Commissioner of Income-tax, Delhi. and also as a holder of a CGHS card mentioning the grade of entitlement Private Ward (vide page 149 of the Writ Petition)..

30. This Petitioner is shocked to see that the Respondents have ignored the law declared by its jurisdictional High Court in *Jai Pal Aggarwal v. UoI,* followed even in other cases. . It is submitted that the Respondent should have worked out the Petitioner's entitlement on the norms suggested by the Delhi High Court, and would have heard this Petitioner also so that complete

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[17] "In my view, the only logical interpretation which can be given to clause 10 of the OM dated 17.8.2010 is that if a government servant or a government pensioner holding a CGHS card takes treatment in emergency in a non-empanelled private hospital, he is entitled to reimbursement at the rates prescribed by CGHS for hospitals which are at par with the hospitals in which the treatment is taken. In other words, if a CGHS card holder, in emergency, takes treatment in a non-empanelled private super speciality hospital, he is entitled to reimbursement at the package rates prescribed by CGHS for super-speciality hospital, irrespective of whether that hospital is empanelled with CGHS or not. One needs to keep in mind that treatment at an empanelled super-speciality hospital is available to CGHS card holder even in a non-emergency condition. Clause 10 of the OM dated 17.8.2010 deals only with the cases where a card holder on account of some emergent medical requirement has to go to a non-empanelled hospital. There is no logical reason for not reimbursing him as per package rates approved by CGHS for its empanelled hospitals if the treatment is taken in a hospital, which is qualified and eligible for being empanelled as a super-speciality hospital though they were not actually empanelled with CGHS. Any other interpretation would result in a situation where CGHS card holder, despite needing immediate medical treatment will either not be able to take treatment in a nearby hospital or he will have to bear the cost of such treatment from his own pocket though he may nor may not be in a position to afford that treatment."

justice is done to this Petitioner. . But this issue is not material because this Petitioner feels that in the Petitioner's grade of entitlement at a Super Speciality hospital, the total cost of treatment would almost be what had been charged by the Jaslok Hospital.

PART 5

Conclusion

31. This Petitioner submits that as the Respondent has made out no case in defence of its remissness towards this Petitioner, the Hon'ble Court may sustain this Petitioner's Petition, and allow the claims with directions to pay cost and interest as this Hon'ble Court considers fair and just.

32. This Petitioner further submits that this Writ Petition has a PIL dimension[18] also, so some general directions may be issued so that the retirees are saved from distress in the stage of their life where most of them have hardly any support or help. The Petitioner would be more than satisfied if the functioning protocol of the CGHS is made fair and just. In this context, this Petitioner would draw this Hon'ble Court's attention to the Conclusion of his Writ Petition at pages 97-99. This Petitioner considers himself very lucky that he could get over his serious stroke and could substantially recover from almost the fatal blow of serious attack of paralysis, and is now in a position to pursue his remedies before our Hon'ble Supreme Court after wading through the distressing administrative labyrinth, with the loadstone of flickering HOPE. This Petitioner knows the cases of some retirees, some of them were his colleagues, who suffered and died tongue-tied. This Petitioner may be permitted to end this Response with a quote in which Draupadi, distressed in the Kaurava Rajya Sabha, supplicates Krishna in these soul-wrenching words. Her prayer did not go futile, as we all know. Most distressed retirees often before their end would get a lot of solace in her words.:[19]:

naiva me patayas santi, na putra, na ca bandhavah

na bhrataro, na ca pita, naiva tvam madhusudana.

(Draupadi cries: "I have no husbands, no sons, no kinsmen, no brothers, no father, not even you, O Krsna.")

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[18] This Petitioner quotes from the Introductory portion of his Writ Petition:

> "This Petitioner adopts a broad spectrum in presenting his Case as, it is humbly stated, it is *adversarial* as (it presents this Petitioner's own case); and also *inquisitorial* (as it has an evident PIL dimension as it brings to the Hon'ble Court's notice the shabby treatment that the retired persons receive, in the evening of their life, from who had been their model employer. In short, this Petition would illustrate what someone had said: while persons laugh diversely, they suffer alike." {at page 1 of the Writ Petition}

[19] Quoted from Dr. Radhakrishnan's *The Bhagavadgita* page 97

DEPONENT

VERIFICATION:

Verified at New Delhi on _____ day of ________ 2016 that the contents of the above counter affidavit and its annexure (from pages ....] are correct to the best of my knowledge and as per the Petitioner's records. The legal submissions made therein are believed to be true. No part of it is false and nothing material has been concealed there from.

Shiva Kant Jha

Petitioner-in-person

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APPENDIX TO

THE PETITIONER'S RESPONSE TO THE RESPONDENT'S REPLY AFFIDAVIT

(A)

Reimbursement of the claim: the pattern that emerges from the judicial decisions

Name of the decision	**Net result of the litigation (the extent of claims allowed)**	**Judicial observations / the Petitioner's comments**
Govt. of NCT of Delhi v. Som Dutt Sharma 118 (2005)DLT 144 [P.B. pages 203-205]	**Full**	" 5. Taking into consideration that the scheme was for the benefit of the pensioners like respondent, the petitioner was expected to give a humane and sympathetic treatment to their pensioners. Non-application of their own scheme

		for reimbursement of medical expenses is against the provision of the scheme formulated by the petitioner as has been rightly held by the Tribunal. We find no infirmity with the order passed by Central Administrative Tribunal." "
Ran deep Kumar Rana v. UOI : 111(2004)DLT473 (emphasis supplied) [P.B. pages 200-202]	**Full**	Once respondents themselves recommended treatment to be taken at Escorts Heart Hospital, they cannot deny full reimbursement on the basis that the charges incurred by the petitioner over and above the package rate cannot be reimbursed. They cannot deny their liability to pay to the Government employee who is entitled for medical reimbursement. (Head note0
V.K.Gupta v. Union of India, : 97(2002)DLT337 [P.B. pages .196-199]	**Full with cost**	"Reference is also invited to a decision of a Coordinate Bench of this Court in Civil Writ No. 5317/1999 titled M.G. Mahindru v. Union of India and Anr. decided on 18.12.2000 wherein the learned Single Bench relying on the decisions of Narendra Pal Singh v. Union of India and Ors. well as State of Punjab and Ors. v. Mohinder Singh Chawla etc. directed reimbursement of the FULL expenses incurred." Para 7
P.N. Chopra v. UOI, (111) 2004 DLT 190 [P.B. pages 188-195]	**Full**	" A welfare State like India is bound to provide the basic requirement of its citizens. Health care facility is an integral part of the same and the Central Government Health Scheme (CGHS) has been propounded for the benefit of the Central Government employees who should not be left without medical care after retirement." Para 1
*Mahendra Pal v. U*oI 117(2005) DELHI LAW TIME 204 [P.B. pages 183-187]	**Full with interest**	No ground s to disentitle petitioner from receiving health benefits integral to right to life. EHIRC empanelled hospital presently ;Even if at the relevant time it was not empanelled hospital, petitioner would be entitled to

		reimbursement of medical expenses , as per CSMA Attendant Rules and rates.... (H.N.) ** CONCESSION by the Petitioner to get at the CSMA Attendant Rules.... See para 15
Suraj Bhan v. Govt. of NCT of Delhi ILR(2010)IV DELHI 559 [P.B. pages 171-177]	**Full reimbursement**, **plus cost of Rs 10000, and interest 18%** from the date of filing the bills.	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..... "The position emerging from various decisions of this Court may be summarised as follows: 1) Even if employee contributes after availing medical facilities, and becoming member after treatment, there is entitlement to reimbursement (DB) Govt. of NCT v. S.S. Sharma : 118(2005)DLT144 2) Even if membership under scheme not processed the retiree entitled to benefits of Scheme - Mohinder Pal v. UOI : 117(2005)DLT204 . 3) Full amounts incurred have to be paid by the employer; reimbursement of entire amount has to be made. It is for the Government and the hospital concerned to settle what is correct amount. Milap Sigh v. UOI : 113(2004)DLT91 ; Ran deep Kumar Rana v. UOI : 111(2004)DLT473 4. The pensioner is entitled to full reimbursement so long the hospital remains in approved list P.N. Chopra v. UOI, (111) 2004 DLT 190 5) Status of retired employee not as card holder: S.K. Sharma v. UOI, : 2002(64)DRJ620 ; 6)If medical treatment is availed, whether the employee is a

		cardholders or not is irrelevant and full reimbursement to be given, B.R. Mehta v. UOI : 79(1999)DLT388 .' The status of a retired Government Employee was held to be independent of the scheme and rules in so far as the entitlement to medical treatment and/or CGHS benefits were concerned (ref. V.K. Gupta v. Union of India, : 97(2002)DLT337). Similarly in Narender Pal Sigh v. Union of India, : 79(1999)DLT358 , this Court had held that a Government was obliged to grant ex-post factor sanction in case an employee requires a specialty treatment and there is a nature of emergency involved." 8. It is quite shocking that despite various pronouncements of this Court and of the Apex Court the respondents in utter defiance of the law laid down have taken a position that the pensioner is not entitled to the grant of medical reimbursement since he did not opt to become a member of the said health scheme after his retirement or before the said surgery undergone by him. 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 on the pretext that he has not opted to become a member of the scheme or had paid the requisite subscription after having undergone the operation or any other medical treatment. Under Article 21 of the Constitution of India, the State has a constitutional obligation to bear the medical expenses of Government employees while in service and also after they are retired. Clearly in the present case by taking a very inhuman approach, these officials have denied the grant of medical

		reimbursement to the petitioner forcing him to approach this Court. The respondents did not bother even after the judgment of this Court was brought to their notice and copy of the same was placed by the petitioner along with the present petition.
C. Ganesh v. Central Administrative Tribunal 9(2012)5 Mad LJ 257 [P.B. pages 150-170]	**Full**	Judicial guide-lines given ** "The said reimbursement amount needs to be paid to the Petitioner on equitable consideration too. Although the Respondents harp on technicalities of rules while disallowing the portion of the claim made by the Petitioner, this Court comes to an inevitable conclusion that when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred for the Respondents 2 to 5 cannot claim to have vested right in injustice being done to the Petitioner. Further, it must be seen that the judiciary is respected not on account of its power to legalise injustice on technical grounds but, because it is capable of removing injustice and is expected to do so." (PARA 39)
Jai Pal Aggarwal v. UoI MANU/DE/2861/2013 [P.B. pages 146-149]	**Allowed**; to be worked at the rates prevailing in Super Speciality Hospital *	Petitioner compelled to take treatment at non empanelled hospital due to emergency - Non empanelled hospital in which Petitioner took treatment was at par with empanelled hospitals - Denial of reimbursement not justified - Petitioner entitled for reimbursement - Petition allowed.(H N) ** "In other words, if a CGHS card holder, in emergency, takes treatment in a non-empanelled private super speciality hospital, he is entitled to reimbursement at the package rates prescribed by CGHS for super-speciality

		hospital, irrespective of whether that hospital is empanelled with CGHS or not. One needs to keep in mind that treatment at an empanelled super-speciality hospital is available to CGHS card holder even in a non-emergency condition." (para 5)
Bodu Ram Jat v. State of Rajasthan (2006)5 SLR 705 [P.B. pages 144]	**Full with cost**. The W.P. is allowed. The respondents are directed to reimburse entire amount as per the bills submitted by the petitioner.....**with cost** of Rs. 10000/	"The benefit of giving medical aid of Rs. 100/ per month must be for routine medical treatment, however, in serious ailment, the technicalities should not and could not have been applied. The hyper-technical stand taken by the respondents is wholly unreasonable and unjustified." (para 5)
J.C. Sindhwani v. UoI 124(20050 DLT 513 [P.B. pages 141-143]	**Full** with with cost "Respondents are directed to process claims of the petitioner and ensure full reimbursement of the bills submitted towards his medical treatment....(H.N.)	"The petitioner, a Central Government pensioner (having worked in the Ministry of Agriculture) claims full reimbursement for the expenses incurred by him towards his medical treatment..." ** The respondents is directed to process the claims of the petitioner, and ensure full reimbursement of all the bills submitted towards the medical treatment, and these payments, within 8 weeks from today. The respondents shall also pay Rs 3000/ as costs to the petitioner within 8 weeks (last para)
Daljit Singh v. Govt. of N.C.T. Delhi 2013(199)DLT 24 [P.B. pages 138-140]	**Full with interest**	Neither reliance on Rule 8 of the CCS (MA) Rules 1944, nor GOI Decision No 15 (A) helped the respondent
Milap Singh v. UoI 2004(113)DLT 91 [P.B. pages 134-137]	**Full , with pungent censure and heavy cost**	""This is one more case of a retired Government servant who has been refused reimbursement of the full medical expenses incurred by him despite numerous judgments on this issue."

Narendra pal Singh v. UoI 1999(79) DLT 358: [Foll. In S.K. Sharma v. UoI *S.K. Sharma v. UoI* [64 DRJ 620)] [P.B. pages 125-129]	**Full with cost**[20] "The petitioner in this case had to be operated in an emergency as he suffered a heart problem and in case he had waited for a prior sanction he might not have survived'	Govt. should not deny the claim on technical and flimsy ground..... "These reasons cannot be appreciated in view of the settled position that the petitioner is entitled to take recourse to an emergency treatment in any area if the circumstances and nature of disease so warrant."
B.R. Mehta v. UoI 79 (1999) DLT 338 [P.B. pages 109-121]	**Full with cost**	REDUCED ON CONCESSION[21] with the observation in the last para: "This question as to whether the petitioner is entitled to the full

[20] "5. The law is, therefore, well settled that right to health is an integral part to life and the Government has constitutional obligation to provide the health facilities to its employees or retired employees and in case an employee requires a specialised treatment in an approved hospital it is the duty of the Government to bear or reimburse the expenses. The petitioner in this case had to be operated in an emergency as he suffered a heart problem and in case he had waited for a prior sanction he might not have survived. Therefore, in this situation it is the duty of the Government to grant ex-post facto sanction and not deny the claim of the petitioner on technical and flimsy grounds. Firstly the Government does not give any proper reasoning to deny the claim of the petitioner in its communication dated 4th December, 1997 and secondly the affidavit of Dr. P.K. Baliar Singh merely states that since the petitioner had taken the treatment in non-C.G.H.S. covered area and as per Central Government Health Scheme Orders and instructions as issued by the Government, a pensioner is not entitled to the facilities of reimbursement. These reasons cannot be appreciated in view of the settled position that the petitioner isv entitled to take recourse to an emergency treatment in any area if the circumstances and the nature of disease so warrant."

[21]In *London Hospital v. I.R.C.* (1976) 1 W.L.R. 613, Lord Brightman J. observed:

> "In conclusion I think it is desirable that I should make a brief reference to *Baldry v. Feintuck*. Counsel for the Medical College sought to rely on that case for the proposition that a Students Union is *prima facie* charitable. It is true that the motion proceeded on the footing that the Students' Union in that case was a charity. The contrary, however, was never argued. The point went by concession. I accepted the concession because I thought it correct. *But a case that proceeds on the basis of a proposition that is not tested by argument is not of much value as an authority for the validity of that proposition.Baldry v. Feintuck* has not, therefore, assisted me in reaching my conclusion"[italics supplied]

"Concession" is "something you agree to do or else someone else do or have, especially to end an argument or conflict."*Collins Cobuild English Language Dictionary*. In *Orissa v. Sudhansu Sekhar Misra*AIR 1968 SC 647 AT 651, our Supreme Court cited with approval the following observations of the Earl of Halsbury L.C.:

> "A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and every observation found therein nor what logically follows from the various observations made in it."

In *Ranchhoddas Atmaram v. Union*AIR 1961 SC 935 this Hon'ble Court held that the observations in three of its decisions were not binding as "the question was never required to be decided in any of the cases and could not, therefore have been, or be treated as decided by this Court."

		amount as expended for his treatment or is only entitled to the amount as admissible on the basis of Memorandum dated 18th September, 1996 is, therefore, left open as the learned counsel for the petitioner has not impugned the Memorandum nor has asked for the amount more than the admissible amount as determined by the respondents." In *UoI v. J.P.Singh* (2010 LIC 3363) too had been decided on the concession, not on merits (vide para 23). At the P.B. page 124.
Kishan Chand v. Govt. of NCT 210 (169) DLT 32 [P.B. pages 86-89]	**Full with cost**	"8. It is quite shocking that despite various pronouncements of this Court and of the Apex Court the respondents in utter defiance of the law laid down have taken a position that the pensioner is not entitled to the grant of medical reimbursement since he did not opt to become a member of the said health scheme after his retirement or before the said surgery undergone by him. 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 on the pretext that he has not opted to become a member of the scheme or had paid the requisite subscription after having undergone the operation or any other medical treatment. Under Article 21 of the Constitution of India, the State has a constitutional obligation to bear the medical expenses of Government employees while in service and also after they are retired. Clearly in the present case by taking a very inhuman approach, these officials have denied the grant of medical reimbursement to the petitioner forcing him to approach this Court. The respondents did not bother even after the judgment of this Court was brought to their notice and copy of the same was placed

		by the petitioner along with the present petition." (para 8)
Rameshwar Prasad (2013) 3 AIR Jhar R. 483 [P.B. pages 84-85]	**The Claim allowed in Full**	"Learned counsel for the petitioners submitted that the medical reimbursement is governed by the Central Services (Medical Attendance) Rules wherein the retired Government officials have been excluded specifically by making provision in Sub-Rule 2(iv) of Rule 1. It is submitted that in view of the said rule the respondent was not entitled to the reimbursement of the medical bill." (para 1)
Regional P.F. Commissioner v. C. K. Nagendra Prasad High Court of [P.B. pages .72-83]	**The claim allowed in Full**	W.P. by the Regional P.F. Commissioner ageist the decision of CAT allowing the Petitioner's Case........ "12. The office memorandum cannot regulate the rules or restrict the operation of the rule. Rule 6 being a beneficial provision, we think it should be interpreted to give its full effect and not to restrict or to deprive of the benefits to the employee. 13. We find the Tribunal has not committed any error in taking the view warranting interference. Therefore, writ petition is dismissed. "
K.K. Kharabanda vs. The Union Of India &Ors [MANU/DE/0294/2009W.P. (C) 6049/2005 [P.B. pages .58-71]	**Full**	'"On perusal of the CS (MA) Rules, 1944, it is manifest that no ceiling limit has been imposed by the Government under the said Rules." (para 13)
Suman Rakheja v. State of Haryana (2004) 13 SCC 562 [P.B. pages 33-34]	**Full with cost**	Medical reimbursement for treatment in private hospital, not recognised /approved –Entitlement to---Emergency Case –Present being a case where government servant had been rushed to the said hospital in emergency....[22] "Ïn the

[22]The Supreme Court observed in *Suman Rakheja's Case*:

		result, in this appal also, the appellant herein would be entitled to get the refund of 1000% medical expenses at the AIMS rates and 73% of the expenditure in excess thereto.”
K.P.Singh v. UoI (2001) 10 SCC 107 [P.B. pages 27-29]	Direction quoted in the next column yet not implemented.	“6. The last grievance, and it is of some note, is that a beneficiary of the Scheme will receive reimbursement only at the rate approved by the CGHS, regardless of the fact that in his particular town or city there are only private hospitals and no government hospital; there is, therefore, no option for him but to enter a private hospital for such treatment. It is also submitted that the approved rates are not updated by the CGHS from time to time so that what the beneficiary receives by way of reimbursement can be substantially less than the cost that has actually been incurred upon his hospitalisation. While there is, we think, merit in the submission, it is not for us to dictate what should be done. We direct that the Union of India shall immediately consider this aspect and give appropriate directions thereon. It would clearly be appropriate for it to update its approved rates on an annual or, at least, biennial basis. “

(B)

AN OVER-ARCHING CASE GOVERNING ALL THE MAJOR POINTS IN THE PETITIONER’s CASE

	The extent of the	**Held by the Court**

“Counsel for the appellant submitted that in similar case i.e. by the order of the High Court of Panjab and Haryana in *Sant Prakash v. State of Haryana* wherein in an emergency case the patient had to be immediately admitted in hospital, the relief has been granted. In the present case also the patent ‘s husband had to be rushed to the private hospital because he had developed a paralytic stroke on the left side of the body, as there was blood clotting on the right side of the brain and therefore, was admitted in emergency condition in the hospital. In the present case the Discharge Summary also shows that the case was an emergency one.In *Sant Prakash Case*, the Division Bench held that the petitioner therein would be entitled to 100^% medical expenses at the AIMS rates and 75% in excess thereto.” (para 4 of the Judgement)

	claim allowed	
E. Ramalingam v. The Director of Collegiate Education (2006) 3 M.L.J.641 Quoted with approval in *C. Ganesh v. Central Administrative Tribunal* 9(2012)5 Mad LJ 257 [NOTE: *E. Ramalinga's Case* is at pages .149A to 149D ...of the Petitioner's Paper Book.]	FULL	(i) The claim for reimbursement cannot be refused on account of delay in the submission of the claims, or on account of the fact the patient had taken treatment in Vijaya Heart Foundation which is not included in the Government Order. "In my opinion, in matters like this, the time limit prescribed cannot be strictly construed as the Government Order is only a beneficial[23] executive order in favour of those who are entitled to claim medical reimbursement. Denying such benefit purely on technical ground of delay, in my view, would be denying the very right to which such persons are entitled to claim benefits of the Government Order." (ii) The reason that the procedure of the cardiac PTCA / Angioplasty had not been recognised by the Government when it was done on the claimant, is not tenable as it is not reasonable. (iii) The Government orders should not be strictly construed as on the date when the G.O. was issued, the treatment viz., PTCA Stent could not have been invented or introduced. (iv) "In recent days, the concept of treating ailments, has advanced so much, thanks not only to the speciality hospitals, doctors specialized in the modern/advance treatments, but also the advanced techniques in method of treatment with use of sophisticated equipments. 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 expertise both on academic qualifications and experience gained. Very little scope is left to the patient or his relative to decide as to manner in which the ailment should be treated" (emphasis supplied) (v) "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."

[23] According to Lord Somervell in *Hanover's Case*[(1957) AC. 436 at 473 cited by H.M. Seervai, *Constitutional Law* 3rd ed at page 189

> "It is unreal to proceed as if the court looked first at the provision in dispute without knowing whether it was contained in a finance Act or a Public Health Act. The title and the general scope of the Act constitute the background of the context. When a court comes to the Act itself, bearing in mind any relevant extraneous matters, there is, in my opinion, one compelling rule. The whole or any part of the Act may be referred to and relied on. It is, I hope, not disrespectful to regret that the subject was not left where Sir John Nicholl left it in 1826. 'The key to the opening of every law is the reason and spirit of the law – it is the *animus imponentis,* the intention of the *law-maker,* expressed in the law itself, taken as a whole. Hence, to arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed, detached from its context in the statute : it is to be viewed in connection with its whole context – meaning by this as well the title and preamble as the purview or enacting part of the statute'."

		(vi) “In regard to the reasons as to the non-inclusion of the hospital in Government order for denial, this Court cannot brush aside the advancement in modem medical treatment. Speciality hospitals are established for treatment for 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 the beneficial order of the Government, solely on the ground that the said hospital is not included in the Government order. It cannot be so. as the Government order should be read keeping the purpose for which the same was issued. 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.” (para 8) (vii) “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 as found in the impugned order..” (para 8) (viii) “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 as found in the impugned order.” “Having regard to the above lacunae in the earlier Government order and issuance of subsequent Government order including not only the treatment but also the hospital, I am of the view that the petitioner is entitled to claim reimbursement.”