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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.2175/2002

New Delhi, this the ^{23rd}23... day of December, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Shri Balram Sharma,
S/o Late Shri Harbans Lal Sharma,
R/o III-F/316,
Nehru Nagar,
Ghaziabad

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Applicant

(By Advocate: Shri J.P. Singh)

Versus

1. Union of India,
Through Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi

2. The Senior Deputy Director General,
Telecom Engineering Centre,
Department of Telecommunication,
Khurshid Lal Bhawan,
Janpath, New Delhi – 110 001

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Respondents

(By Advocate: Shri D.S. Mahendru)

ORDER

By Sarweshwar Jha, A.M. :

Earlier this OA had been decided vide the Tribunal's order dated the 8th May, 2003, in which the following observations had been made by the Tribunal:-

"24. xxxxxx. In the present case the applicant had taken advice at AIIMS and finding that there was a large que, the applicant could not wait and went to EHIRC. The same was the situation in the case of State of Punjab vs. Mohan Pal (Supra) when the applicant could not wait and of his own gone to EHIRC and the Hon'ble Apex Court had held that the applicant is entitled to package deal.

25 So in view of the position explained above, the applicant in this case has not been referred to EHIRC by any recognized hospital, but has gone to EHIRC on his own volition. Hence, I am of the considered opinion that in this case since the applicant had gone to EHIRC on his own though after taking permission and as he has given in writing that he be paid at the AIIMS rates, i.e., as per the package deal. So now, the applicant

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cannot turn around and claim full reimbursement when he had given in writing that he will bear the additional expenditure.

26. In view of the above, the OA does not call for any interference and the same has to be dismissed. Accordingly, I find that the OA has no merits and the same is dismissed. No costs."

2. The applicant, being not satisfied with the order of the Tribunal, filed a Civil Writ Petition No.6990 of 2003 in the High Court of Delhi against the said orders. The Hon'ble High Court has given the following decisions:-

"Our attention has been drawn to a Division Bench decision of this court in Sqn. Commander Randeep Kumar Rana vs. Union of India passed in CWP No.2464/2003. It has been contended that the ratio of that judgement squarely placed to the facts of this case as this judgement was rendered after the impugned judgement.

We set aside the impugned order and remit the matter to the Tribunal to decide afresh in accordance with law laid down in Sqn. Commander Randeep Kumar Rana vs. Union of India. Parties are directed to appear before the Tribunal on 10th August, 2004"

3. I have gone through the decisions of the Hon'ble High Court in Civil Writ Petition No.2466/2003 in the case of Commander Randeep Kumar Rana v. Union of India. It is observed that the applicant in the said petition, who was a Commander in the National Security Guard, had incurred expenditure of an amount of Rs.2,09,501/- for the treatment of his minor son, who had been diagnosed with heart ailment known as Ventricle Septal Defect (VSD) at the age of four months. The treatment in the case of the child of the petitioner in the said petition had been availed at NSG Hospital, Safdurjung Hospital and Escorts Heart Hospital. The applicant was, however, paid only a sum of Rs.1,42,736/- and was asked to refund the remaining amount of Rs.1,44,000/- which was in excess of the charges admissible as per the package rates. It is further observed that in the said case the treatment had commenced at the NSG Hospital from where the patient was referred to Safdurjung Hospital and who further referred him to the Escorts Hospital for open heart surgery. The applicant in the said case was granted permission by the respondents for necessary surgery.

4. The respondents in the said case had contended that the claim of the applicant in the said case had been correctly allowed, as per the admissible rates in the case of Central Govt. employees.

5. The Hon'ble High Court in the said case, however, has observed as under:

"We have given our careful considerations to the arguments advanced by learned counsel for both the parties. It is not denied that the treatment taken at Escorts Hospital was pursuant to the recommendation made by the Safdarjung Hospital, which is a Government Hospital. Naturally, when a small child is to be treated for Ventricle Septal Defect involving open-heart surgery, a

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specialized hospital and its services are required. Therefore, once the respondents themselves have recommended the treatment to be taken by the Escorts Hospital, they cannot deny the full reimbursement on the basis that the charges incurred by the petitioner over and above the package rate, which the respondent has agreed with the said hospital, cannot be reimbursed. At page 12 of the paper-book there is a letter conveying permission by the respondent to the petitioner to undertake specialized treatment from recognized private diagnostic center. There is another letter of the respondent at page 22-23 of the paper-book in which it has been admitted that Escorts Heart Institute and Research Centre was also one of the hospitals which the petitioner was entitled for treatment. Now we come to the plea, which has been taken by the respondent in the counter affidavit. It has been contended in para 11 of the counter affidavit that it is the duty of the citizens to see and ensure that such recognized hospital do not charge excess of the package rates. How a citizen can ensure that a hospital does not charge over and above the package rate? The power to lay down guidelines is with the respondent. A citizen is a mere spectator to what State authority do and decide. If the hospital has charged over and above the package rate, the respondent is under an obligation to pay such charges as the petitioner has incurred over package rates at the first instance and if in law state can recover from the hospital concerned, they may do so but they cannot deny their liability to pay to the Government employee who is entitled for medical reimbursement.

We do not see any merit in the submission of the respondent. We direct the respondent to reimburse the full amount of Rs.2, 09,501/- after taking into consideration the amount of Rs.1, 42,736/- which has already been paid to the petitioner. The balance amount be reimbursed within a period of four weeks. Petition stands allowed. Rule is made absolute.”

6. The case of the applicant in the present OA, however, is different from the case which has been decided by the Hon'ble High Court in Civil Writ Petition No.2464/2003 in the case of **Sqn. Commander Randeep Kumar Rana** (supra). The applicant in the present OA, on having suffered a heart attack in the month of January, 2000, was admitted to Ayushman Hospital on 20.1.2000 and incurred an amount of Rs.22,000/- on his treatment in the said hospital. It was in the month of February, 2000 that he went for check up at the All India Institute of Medical Sciences where necessary tests were conducted on him and whereafter he was advised to undergo Angioraphy. He was permitted to have Angiograophy done at Escorts Heart Institute and Research Centre by respondent No.2. After investigation at the said hospital he was diagnosed to be a case of Triple Vessel decease with mild left ventricular dysfunction. Accordingly, he was advised to undergo open heart surgery and also carotid surgery. The applicant has claimed that he sought approval for the said operation at the Escorts Hospital, which was granted by the respondent No.2. He was given an estimate of about Rs.2,00,000/- by the said Hospital and was advised to be admitted. He was, however, paid Rs.89,000/- by the respondents as an advance before he was admitted for surgery.

The surgery was conducted on him on 12.6.2000. In all, an amount of Rs.2,30,306/- was spent on the treatment. He was, however, reimbursed another amount of Rs.41,612/-. The applicant requested the respondents to pay him the balance amount of Rs.99,694/- as per law laid down by the Hon'ble Courts in various cases, including the decisions of the Hon'ble Supreme Court in the case of State of Punjab & Others vs. Mohinder Singh Chawla etc. (JT 1997 (1) SC 416). However, the respondents informed the applicant vide their letter placed at Annexure P/7 to the OA that the medical reimbursement as admissible to the applicant has already been decided according to the rules in force.

7. The respondents, in their counter reply to the OA, have reiterated that reimbursement in the case of the applicant had been made under the CGHS Rules as per the approved rates fixed by the Ministry of Health and Family Welfare and not on the basis of the actual expenditure. According to them, this principle has already been up-held by the Hon'ble Supreme Court in the case of Shri R.L. Bagga vs. State of Punjab & Others. They have insisted that the case of the applicant is covered only under the CGHS Rules, as he is a CGHS beneficiary residing at a CGHS covered area. In the counter reply as filed by the respondent No.2, I find that they have referred to the fact that the applicant, on his own, had voluntarily expressed his readiness to bear the difference of the charges of the hospital as per the rules. The permission to undergo the surgery at the Escorts Heart Hospital was given to him keeping in view the said voluntary undertaking so that he could avoid the long queue at the AIIMS. Reference in this regard has also been made to the letter of the applicant addressed to the Sr. D.D.G., T.E.C., K.L. Bhawan, New Delhi dated the 17th April, 2000 in which he has admitted that he was under treatment of RML Hospital and AIIMS and after necessary tests at the AIIMS, he had been advised to undergo Angiography and further treatment. He could not afford to wait for a long time due to his critical condition. The condition of his wife, who was receiving treatment at Dharamshila Cancer Hospital and Research Centre, was also critical at the same time. Accordingly, he sought permission to get treatment in the Escorts Heart Institute and Research Centre and expressed his readiness to bear the difference of charges of the hospital as per rules. It appears that he was permitted to avail himself of treatment at the Escorts Hospital after receipt of this letter.

8. It is a known fact that AIIMS is a premier Institution even in the field of open-heart surgery and is considered to be a national institute of excellence in this and other fields. Quality of treatment at the said hospital would certainly have been of the desired level. However, it was because of the long queue that the applicant could not afford to wait for treatment at the AIIMS and, therefore, sought to be permitted to undergo the said surgery at the Escorts Heart Institute, undertaking to bear the difference of the charges of the hospital as per rule. As he was admitted in

a premier institution, he would perhaps not have been permitted to go to any other hospital for the said treatment had he not submitted the said letter seeking early treatment at another hospital.

9. There are various decisions on what line medical reimbursement should be made to the CGHS beneficiaries in such cases. The two sides in their respective submissions have cited a number of such decisions. Some of these decisions had also been taken note of in the decisions of this Tribunal earlier given on the 8th May, 2002 in the OA which has been set aside by the Hon'ble High Court. While examining the present case with reference to the decision of the Hon'ble High Court in **Sqn. Commander Randeep Kumar Rana vs. Union of India** (supra) and finding that the facts of the two cases are different inasmuch as in the case of **Sqn. Commander Randeep Kumar Rana** a child had been initially treated at the NSG Hospital and subsequently at Safdurjung Hospital, who referred the child for treatment at Escorts Heart Institute, in the present case the treatment availed by the applicant at Escorts Heart Institute and Research Centre was entirely on his own and on his giving an undertaking that he would be bearing the difference of charges of the hospital. As has been mentioned above, AIIMS were themselves the competent and right place for the applicant to be treated including carrying out open-heart surgery, where cases of this category come from different parts of the country. Seeking reference from AIIMS to Escorts Heart Institute is quite unusual in strict medical/surgical sense, keeping in view their expertise, and it was entirely on the personal endeavour of the applicant that he was allowed to go to Escorts Heart Institute and Research Centre for the reasons stated above.

10. While the ratio of the decisions of the Hon'ble High Court in the case of **Sqn. Commander Randeep Kumar Rana** (supra) that the power to lay down guide-lines "in the matter of hospital charges and reimbursement thereof" is with the respondents and not with the citizens is general relevant to any case of reimbursement of medical expenses, in the case of the applicant the difference is caused by the fact that he was already receiving treatment at the premier Institute of the country, i.e., AIIMS and that quite an unusual exception was made in his case when he was referred to the Escorts Heart Institute and Research Centre purely for his personal reasons and on his personal volition. It was a positive step on the part of the respondents to have acceded to his request on being referred to the said Centre. But the fact remains that quite in a number of cases including that of **State of Punjab & Others v. Mohan Pal** (2002 SCC (L&S) 189), it has been held by the Hon'ble Apex Court that the beneficiary is entitled to medical reimbursement only at AIIMS Hospital rates. Keeping in view the aspect of limitations in regard to the capacity of the Government/respondents to pay at the rates which are charged by the private hospitals and also the position in regard to laying down guide-lines on

what should be the charges of such hospitals so that they maintain a rational relationship with the rates of AIIMS, it will be quite difficult to take a view that in cases where treatment is availed at a hospital other than AIIMS, reimbursement should be made at the rates charged by the hospital without causing a strain on the ability of the respondents to pay. In this connection, it will be appropriate to refer to the decisions of the Hon'ble Supreme Court in the case of **State of Punjab & Ors v. Ram Lubhaya Bagga and Others** reported in (1998) 4 SCC 117 wherein the Hon'ble Supreme Court has held that the State has a right to fix the package deal and it is not violative of fundamental rights and directive principles and that every individual right has to give way to right of the public at large. The following extract from the judgement of the Hon'ble Supreme Court would make the matter still clearer:

“D- Constitution of India – Articles 21, 41 and 47 – Right to health life – Held, is the obligation of the State but Government is justified in limiting the facilities to the extent permitted by its financial resources – Hence, the decision of the appellant – State to restrict financial assistance to its employees for medical treatment, within the resources of the State, held, not violative of Article 21 – Service Law – Allowances – Medical Allowance – Reimbursement of medical expenses”.

11. In consideration of the above and having due and most respectful regard to the directions of the Hon'ble Supreme Court and having perused the decisions of the Hon'ble High Court in the case of **Sqn. Commander Randeep Kumar Rana** (supra) and finding further that the said case is not exactly relevant to the case of the applicant in the present OA, while I do not find any reason to interfere with the decisions of the respondents in regard to reimbursement of medical expenses to the applicant with reference to the AIIMS rates (as per the package deal), I am inclined to leave it to the respondents to consider the case of the applicant in the light of the decisions of the Hon'ble Supreme Court in the case of **State of Punjab & Others vs. Mohan Lal Jindal** (supra) in which, among other things, the Hon'ble Apex Court had permitted the respondents (appellant authorities) to consider the representation of the applicant in respect of reimbursement of additional amount on compassionate grounds. This OA thus stands disposed of with the above observation. No order as to costs.



(Sarweshwar Jha)
Member (A)

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