

Central Administrative Tribunal
Principal Bench

O.A.No.1187/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 12th day of March, 2003

Kishan Shah
s/o Shri Ram Swaroop
r/o 63/1, Mochi Bagh, Moti Bagh-II
New Delhi - 110 021. ... Applicant

(By Advocate: Sh. Harvir Singh)

Vs.

1. Union of India through
The Secretary
Ministry of Urban Development
Nirman Bhawan
New Delhi.
2. The Executive Engineer
Central Public Works Department
Divn. 9, Circle VII, R K Puram
New Delhi - 110 066. ... Respondents

(By Advocate: Ms. Rinchen O. Bhutia)

ORDER

By Shri Shanker Raju, M(J):

Applicant, who retired on superannuation in March, 2002, impugns respondents' orders dated 20.9.2000 as well as 11.2.2002 wherein his claim for medical reimbursement has been turned down. He has sought quashment of these orders with direction to respondents to reimburse the expenses incurred on medical treatment.

2. Applicant, who was working as Pump Operator during the course of duty sustained injuries and fractured, was admitted in Safdarjung Hospital on 1.2.2000. Meanwhile he retired from service in March, 2002 and had given his option for getting CGHS facility after retirement.

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3. Applicant's condition deteriorated and was shifted to the Indian Spinal Injury Centre at Vasant Kunj where he remained under treatment from 3.2.2000 to 10.2.2000. Applicant on his discharge, applied for reimbursement of medical expenses but before this, his condition worsened and was admitted on Orthonova Institute of Advance Surgery & Research (hereinafter called as "Orthonova Institute") where he remained for five days and was discharged on 22.2.2000.

4. In response to respondents' letter dated 22.5.2000 applicant has been asked to avail the CGHS facilities after retirement, he has given his consent.

5. Applicant preferred his claim for expenses incurred at Orthonova Institute, but was denied vide letter dated 22.2.2000 by the respondents as the treatment at Orthonova Institute has not been advised by the Doctors at Safdarjung Hospital and he was asked to furnish a certificate to this effect from Safdarjung Hospital. On submission of the certificate, it is advised vide letter dated 15.5.2000 that the letter received from Safdarjung Hospital should be duly stamped. In response, applicant has filed his representation and submitted the advisory letter of doctors from the Safdarjung Hospital.

6. The aforesaid hospital has been recognised by the Ministry of Health & Family Welfare vide their letter dated 18.9.1996.

7. Shri Harvir Singh, learned counsel appearing on behalf of applicant placed reliance on the following decisions of the Apex Court to contend that in case the medical expenses are incurred in private hospital other than AIIMS, the case should be considered on compassionate grounds as well as in emergency the treatment incurred at in private hospital reimbursement can be made and for this Union of India has been directed to consider the matter:

1. State of Punjab & Others v. Mohan Lal Jindal, (2001) 9 SCC 217.
2. Sunderlal v. State of M.P., JT 2000(Suppl.1) SC 590.

8. Shri Harvir Singh further contended that due to urgency and survival of the applicant, he had availed medical facilities in a recognised hospital. For this he has been given referral from the Safdarjung Hospital. It is also stated that merely because he could not obtain advice from the Safdarjung Hospital, cannot be a plea for rejecting the claim despite the fact that he could get the medical advance and submitted the same to the competent authority.

9. On the other hand, respondents' counsel Ms. Rinchen O. Bhutia strongly rebutted the contentions and questioned the very basis of the claim on the ground that whereas in the present OA name of applicant spelt as Kishan Shah, s/o Shri Ram Swarup but in the Safdarjung Hospital's OPD slip his name has been mentioned as Kishan, the identification of the applicant should be put to strict proof.

10. On merits, learned counsel for respondents contended that Annexure-A2 is an OPD slip of admission and not the admission card, and moreover discharge slip has not been annexed to show that applicant has remained in Safdarjung Hospital.

11. Moreover, placing reliance on instructions issued through OM dated 21.6.1996 by the Ministry of Health, for referral treatment, it is contended that if there is need to get treatment in CGHS recognised private hospital, the same has to be recommended from the CGHS specialist or Government hospital. As Indian Spinal Injury Centre is not a CGHS recognised hospital, expenditure incurred therein, cannot be reimbursed.

12. Moreover, it is stated that the present case is of a fracture which does not envisage any medical emergency, applicant could have continued treatment in Safdarjung Hospital or could have been referred in case of emergency to a recognised CGHS hospital.

13. While getting admitted in Orthonova Institute, applicant has not sought recommendations from the CGHS or from the Government hospital. In absence of any advice letter from Safdarjung Hospital, which has not been submitted by applicant, his claim is not legally admissible as he failed to follow the rules.

14. I have carefully considered the rival contentions of the parties and perused the material on record. It is an admitted fact that Orthonova Institute has already been recognised by the Ministry of Health, through OM dated 18.9.1996.

15. In so far as referral to Orthonova Institute and recommendation by Safdarjung Hospital where applicant has taken treatment is concerned, his case has been rejected as he failed to get an advice from the Safdarjung Hospital while getting treatment in Orthonova Institute.

16. By letter dated 22.2.2000, written by the Executive Engineer, as the applicant has wished to get treatment in Orthonova Institute, the same has been made permissible only if the Government hospital gives advice in writing to get treatment in a private recognised hospital. For which he has been asked to provide an advisory certificate from the concerned hospital. This has been reiterated by a letter dated 15.5.2000 wherein it has been stated that in case of advice certificate submitted by applicant, the same shall be sent in original along with stamp and signatures of the Doctor. In response, applicant has furnished to respondents through his representation prescription slip of Safdarjung Hospital bearing signature and stamp of the Doctor but this has been disputed by the respondents and contended that no such certificate has been issued.

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17. As per the guide-lines on the subject, in case of referral to a private hospital, either the CGHS specialist or a Doctor from the Government Hospital should give advice in writing to undergo treatment in private hospital.

18. In so far as emergency condition of applicant is concerned, that is to be ascertained by respondents taking into account all factors involved.

19. The decision, cited by applicant, of the Apex Court laid down that on compassionate basis the matter be considered and directions have been issued to respondents, i.e., Union of India, to revise the present guide-lines in so far as the referral to private are concerned. Moreover, in the case of Pt. Paramanand Katara v. Union of India & Others, AIR 1989 SC 2039 the Apex Court held that "human life is of paramount importance and if it is lasted, the status-quo ante cannot be restored as resurrection is beyond the capacity of man"

20. The Co-ordinate Bench of this Tribunal in R.S.Sharma v. Union of India & Others, 1997(2) ATJ 205 held that in case of emergency and treatment at private hospital, reimbursement is permissible. This has been reiterated in Shri Bhagwan Singh v. Union of India & Others, ATJ 2002 (1) CAT 226.

21. Moreover, in case of Sunil Kumar Jana v. Union of India & Others, OA 945/2002, decided on 19.2.2003 wherein the applicant has prayed the same

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relief as prayed in the present case, this Tribunal has disposed of the OA and the respondents have been ordered to be reconsidered the claim of the applicant therein.

22. In the light of what has been stated above and the fact that the contention of the learned counsel for applicant is that the certificate in original having been stamped and mentioned the designation of the Doctor from the Government hospital, i.e., Safdarjung Hospital, and finally advice of the Safdarjung Hospital to take treatment in Orthonova has already been furnished to respondents and the same has been disputed, ends of justice would be met if the present OA is disposed of with the direction that in the event applicant produces before respondents a copy of the advice by the Doctor of Government hospital regarding treatment at Orthonova Institute, his case would be ^h considered sympathetically for medical reimbursement in accordance with rules, within two months from the date of receipt of a copy of the advice by passing a detailed and speaking order. OA is disposed of accordingly. No costs.

S. Raju
(Shanker Raju)
Member(J)

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