

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.3012 of 2002

New Delhi, this the 6th day of February, 2004

HON'BLE MR. KULDIP SINGH, MEMBER (JUDGE)

Shri R. K. Shukla
Advocate
Kale Nagar
New Delhi.

Applicant

By Advocate. None.

Verdict

1. Union of India
Through its
Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.
2. The Director General,
Central Government Health Scheme,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.
3. The Assistant Inspector General (Peris)
Central Industrial Security Force,
Ministry of Home Affairs,
13, CGO Complex, Lodhi Road.
New Delhi. Respondents

By Advocate. Shri Rafeeq Bansal, proxy counsel for
Shri B.K. Aggarwal, Counsel for Respondent
Nos. 1 and 2.

Shri B.S. Jain, Counsel for Respondent
No. 3.

O R D E R

The applicant has filed this OA under Section 13 of the Administrative Tribunals Act, 1985 as he has a grievance against arbitrary and discriminatory communications dated 28.4.2000 and 29.8.2000 made by the respondents contrary to the provision of admissibility of the treatment in private hospital as notified vide this OM dated 18.9.1996 by the Medical Reimbursement claimed b- the applicant had been entitled and allowed far below to the actual entitlement, resulting in financial losses to the applicant.

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2. Facts in brief are that the applicant is an IPS Officer of the Manipur Tripura Cadre and is presently on deputation with the Central Industrial Security Force and has been regularly subscribing towards Central Government Health Scheme (CGHS). The applicants wife Smt. Nandini Shukla had fallen ill and had to undergo medical surgery for Umbilical Hernia at Indraprastha Medical Corporation Limited, New Delhi. The applicant submits that he had obtained a prior permission from the competent authority for treatment of his wife at Indraprastha Medical Corporation Limited and he had submitted an estimate of expenditure amounting to Rs. 45,000/- as given by the hospital.

3. Based on this estimate the applicant was also sanctioned 80% advance to meet the expenses and the applicant claims that he had fulfilled all the conditions as per the OM dated 18.9.1996.

4. After the treatment the applicant submitted a treatment of medical bill of Rs.43146/- on prescribed proforma duly supported with all essential documents and requested therein for adjustment of advance of Rs.36,000/- also against the total amount of claim on 10.2.1998. However, the applicant's medical reimbursement bill was scrutinised by the respondents and allowed reimbursement to a sum of Rs.12,002/- against the claim preferred of Rs.43,146/- hence the applicant was directed to refund the balance amount of advance which was sanctioned to the tune of 80% of the original estimate.

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5. Applicant made a representation for re-check and on rechecking the admissibility was further curtailed to Rs. 7005/-.

6. The applicant challenges the same as no proper calculation admissible to avail the treatment in Private Hospital including Indraprastha Medical Corporation Limited, New Delhi has been notified by the Government of India, Ministry of Health and Family Welfare vide their OM dated 18.9.1996 which prescribes package deal which included various charges:-

- 5 "(a) Admission charges
- (b) Accommodation charges
- (c) ICU/ICCU charges
- (d) Monitoring charges
- (e) Operation charges
- (f) Anaesthetic charges
- (g) Operation theatre charges
- (h) Cost of drugs and disposable surgical sundries
- (i) Physiotherapy charges

7. It is further submitted that accommodation charges has been mentioned in the package deal but rates for room rent has been specified for different categories of officers for CGHS Officers.

8. The calculation of Rs. 7005/- is an arbitrary exercise of the powers ignoring the guidelines contained in the OM.

9. It is further stated that the package deal is general in nature. It does not give minute details of ancillary charges raised by the hospitals and it does not give the details of the amount spent by the officer.

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10. The applicant further alleges that as per the guidelines the applicant should have been reimbursed the amount which is admissible according to the OM dated 18.9.1996 and according to the OM it comes to Rs. 23,625/-.

11. It is further stated that in the package deal the charges regarding operation theatre, anaesthesia charges, cost of drugs and disposable surgical sundries have been clearly included and if we go by the definition of these OI related charges, then the entire amount of Rs. 13,993/- over and above the fee payable to the surgeon would be admissible to the applicant. By disallowing the OI charges, the respondents have violated the instructions given in the Package Deal as circulated vide OM dated 18.9.1996.

12. It is further stated that as per the judgment given by the Hon'ble Supreme Court in the matter of State of Punjab vs. Mohinder Singh Chawla reported in 1997 (200 SCC 83) entire amount has to be reimbursed thus the applicant is entitled for full amount of room rent.

13. Applicant further compares himself to the employees of Public Sector Undertakings and Corporations who are getting 100% of the charges paid by them to these hospitals whereas the Central Government employees to whom the scheme has been extended are merely paid about 15 to 20% of the total expenditure incurred by them.

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14. It is further stated that the comparative study of the rates prescribed under various heads by the Ministry of Health & Family Welfare vide OM dated 18.9.1996 and rates actually charged by the private hospitals, which have been brought on the panel of the Central Government would go to show that there is lot of anomaly and difference in the two rates. In fact, the OM dated 18.9.1996 gives an impression to a Government servant that perhaps he is also entitled for treatment in these hospitals like any other Corporate employees without having to spend from their pocket, whereas in the case of a Government servant he has to pay over and above the package deal. Thus it is stated that package deal itself is bad in law.

15. The respondents are contesting the OA. Respondent No.3 has also filed a separate counter affidavit and submitted that Central Industrial Security Force (hereinafter referred to as CISF) is not covered under the CGHS and since the applicant is on deputation so he is not entitled to any benefit from respondent No.3 as he has opted for CGHS scheme.

16. The respondents - Union of India submitted that reimbursement under the CGHS is done as per the CGHS rates only and in the case of R.L. Bagga, Hon'ble Supreme Court has upheld in principle that Government could fix rates as it does not have unlimited funds at its disposal.

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17. The sanctioning of Rs.36,000/- is stated to be bad and the department should have granted 90% of the admissible amount as per the package rate of CGHS as contained in the OM dated 18.9.1996 instead of granting 86% of the estimate of Indraprastha Apollo Hospital.

18. Respondents further stated that the package rate for repair of Umbilical Hernia is Rs.5200/- for semi-private ward (15% more for Private Ward) in addition of cost of investigations which are not part of package, are reimbursable as per the CGHS rates. As per the OM dated 7.6.97 any additional amount is to be borne by the beneficiary.

19. The respondents submitted that reimbursement under the CGHS is done as per the CGHS rates only and the Hon'ble Supreme Court in the case of R.L. Bagga VS. State of Punjab had upheld in principle that the Government can fix rates as it does not have unlimited funds at its disposal.

20. I have heard the learned counsel for the parties and gone through the records of the case.

21. As regards the objection taken by the department with regard to the package deal is concerned, that is the only short question which requires determination in these proceedings.

22. The learned counsel for the applicant has referred to a judgment reported in 1996 AIHC 2426 (Andhra Pradesh High Court) entitled as B. Sanjeeva Reddy VS.

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Government of A.P. and Others which is with regard to Promissory Estoppel and submitted that since the department had already given 80% of the advance submitted by the applicant so now the department cannot say that the applicant is not entitled to the tune as the department is estopped to say that he is not entitled to the same.

23. The applicant has also then referred to the judgment in the case of Narendra Pal Singh VS. U.O.I. and Others reported in 79(1999) Delhi Law Times 358 and submitted that according to this judgment the applicant is entitled to full reimbursement. Similarly the applicant has also relied upon the judgment in the case of M.L. Kamra Vs. Lt. Governor and Other reported in 2003 (66) DRJ 560 (DB) (High Court) for reimbursement of his medical claim.

24. On the contrary the respondents relied on the judgment of the Hon'ble Supreme Court in the case of State of Punjab VS. Ram Lobhaya Bagga reported in 1998 II ADSC) 449 wherein the Hon'ble Supreme Court has observed as under:-

" Constitution of India, 1950 - Article 21 - Right to life - Medical expenses incurred - submitted for reimbursement - New Policy - Expenses in Private Hospital admissible only if treatment not available in Government Hospital - Whether new policy is unjustified and violative of Article 21 of Constitution? No.

Held: No State of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its employees. Provision of facilities cannot be unlimited. It has to be to the extant finance permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion:

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that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India".

25. I have considered the rival contention and the judgment cited by the counsel for the applicant.

26. As regards the plea of estoppel is concerned, I find that merely the amount had been sanctioned by the department on the basis of the estimates submitted by the applicant and that too after obtaining the same from the hospital authorities does not mean that the applicant is entitled to claim the amount of entire estimate or the amount of actual expenses as preferred by the applicant.

27. In this regard we may refer to Annexure A-3 which is letter sanctioning of advance to the applicant wherein it is stated that the sum entitled to as per the package deal rates as prescribed in the Ministry of Health and Family Welfare OM dated 10.8.96. Thus at the time of sanctioning of the advance it was made clear to the applicant that he will be entitled to the reimbursement in accordance with OM dated 18.9.96 so the applicant cannot claim the actual expenditure spent by him.

28. Now coming to the OM dated 18.9.1996 the entry at S.No.26.19 prescribed package rate for Umbilical Hernia which is Rs.5200/-. Now a question arises what are the contents of the package deal. Para 5 reads as under :-

"The package deal rates include admission charges, accommodation charges, ICU/ICCU charges, monitoring charges operation charges, anaesthetic charges,

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operation theatre charges, cost of drugs and disposable surgical sundries, physiotherapy charges. This will not be include diet, Telephone charges, TA charges and cost of cosmetics, toiletry, tonics and medicines advertised in mass media which are not reimbursable".

29. The room rent provided for different categories also define in the said OM but the package deal rates include accommodation charges. The applicant could have availed accommodation as per his designation/status and as per his entitlement. So now the only point which needs consideration is whether as per the judgment of the Delhi High Court in the case of 2602 (64) DRJ 454 T.S. Oberoi VS. U.O.I. & Another and Narender Pal Singh (Supra), the same benefits be extend to the applicant.

30. In the case of T.S. Oberoi it was a fact that the applicant was admitted to the G.B. Pant Hospital wherefrom the hospital authority had referred to the private hospital, therefore, the court came to the conclusion that the CGHS hospital themselves were not able to provide medical facilities that is why they had referred it to the private hospital so the applicant therein was held entitled to the amount claimed.

31. As regards Narender Pal Singh (Supra) is concerned, the Government was defending his case on the ground that the prior permission was not taken but the court found that since the applicant had suffered an ailment and had taken treatment at one of the recognised hospitals, so on that plea the petition was allowed.

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32. On the contrary the judgment of the Supreme Court in the case of State of Punjab VS. Ram Lubhaya Baiga (Supra) the Hon'ble Supreme Court has stated that the State was within their right to fix the rates of reimbursement and vide their OM dated 18.9.1996 they had fixed the rates of the package deal which cannot be challenged. The applicant has simply tried to interpret the package deal in a different manner which cannot be permitted.

33. It is further stated that the applicant has tried to compare himself with the employees of the PSU and Corporation who are not covered by the CGHS so the applicant cannot compare himself with the employees of PSU and Corporation.

34. Applicant also submits that it is a half-hearted attempt on the part of the Government to extend facility of these hospitals to the Government servants as well, which is nothing but a sort of trap. But once the Hon'ble Supreme Court after considering this OM dated 18.9.1996 has observed that the Government is within their right to fix the package rates so I find that the package deal is a complete reimbursement and the applicant cannot claim over and above the package rates.

35. In view of the above, no interference is called for. Accordingly, the OA has no merits and the same is dismissed. No costs.

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(KULDIP SINGH)
MEMBER (JML)