

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00961/2018

Friday, this the 3rd day of January, 2020

C O R A M :

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

Ambika.K.K.,
W/o.late Rajagopalan.O.,
Aged 53 years,
Residing at Odupara House, Kuttanassery P.O.,
Thiruvazhiyode via, Palakkad District,
Kerala – 679 514.

...Applicant

(By Advocate Mrs.Rekha Vasudevan)

v e r s u s

1. Deleted vide order dated 03.01.2020.
2. Bharat Sanchar Nigam Limited,
represented by its Chairman-cum-Managing Director,
Corporate Office, Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane,
Janpath, New Delhi – 110 001.
3. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Kerala Circle, Thiruvananthapuram, Kerala.
4. The General Manager,
BSNL, Sanchar Bhavan,
Palakkad – 678 014.
5. The Deputy General Manager,
BSNL, Sanchar Bhavan,
Palakkad – 678 014.

...Respondents

(By Advocates Mr.N.Anilkumar, SCGSC [R1] & Mr.T.C.Krishna [R2-5])

This application having been heard on 3rd January 2020, the Tribunal on the same day delivered the following :

ORDER (ORAL)

The applicant is aggrieved by denial of medical reimbursement for the treatment undergone by her husband late Shri.O.Rajagopalan. Late Shri.O.Rajagopalan was an employee of the Bharat Sanchar Nigam Limited (BSNL), the 3rd respondent. While he was in service he was suffering from cancer and was under treatment for the same since 2013 onwards. He retired from service on 30.11.2015. Subsequent to his retirement he had registered himself under Medical Reimbursement Scheme. Initially he took treatment from Amritha Institute of Medical Science (AIMS), Kochi and the requisite medical bills for treatment has been reimbursed by the respondents. Thereafter his health condition deteriorated and the Doctor of AIMS, Kochi has given him the option for taking second opinion in terms of their certificate dated 6.7.2017. He was shifted to Lakeshore Hospital and Research Centre, Nettoor for treatment under the supervision of Dr.P.V.Gangadharan. Ultimately, he died on 27.7.2016. The applicant has presented the claim for medical reimbursement for an amount of Rs.984984.88 which was returned unpaid on the ground that no concurrence was sought for treatment at Lakeshore Hospital and there is no visiting certificate as required under the rules. The applicant further states that since the requisite concurrence for treatment outside the SSA limit was already granted, no further concurrence is mandatory under the rules. Feeling aggrieved by non reimbursement of medical expenses the applicant has approached this Tribunal.

.3.

2. Along with the O.A the applicant has filed M.A.No.180/1288/2018 to condone the delay of 354 days in filing the O.A. Delay is condoned. M.A is allowed for the reasons stated therein as being peculiar facts and circumstances of the case.

3. Notices were issued and respondents put appearance through learned counsel Shri.N.Anilkumar, learned SCGSC appearing on behalf of Respondent No.1 and Shri.T.C.Krishna, learned counsel appearing on behalf of Respondent Nos.2-5. M.A.No.180/879/2019 is filed wherein prayer has been made to delete Respondent No.1 from the party array. M.A is allowed as Respondent No.1 has no relation whatsoever in settling the claim of the applicant.

4. The stand taken by the Respondent Nos.2-5 in their reply statement is that the report by the visiting officer is an important guidelines in the BSNL Medical Reimbursement Rules. Permission to avail indoor treatment in a hospital outside the home SSA, certificate of hospital visit from authorized officer, certificate of identification of the patient with reference to the BSNL Medical Reimbursement Scheme Card by the doctor treating the patient and the discharge summary are essential for processing the claims under the Scheme. Relaxation of these requirements cannot be given in a case as it would pave way for rampant misuse of the facility besides setting a very bad precedent.

.4.

5. Heard Smt.Rekha Vasudevan, learned counsel appearing on behalf of the applicant and Shri.T.C.Krishna learned counsel appearing on behalf of Respondent Nos.2-5. During the course of the argument, learned counsel for the applicant has cited the judgment of the Hon'ble Apex Court in the matter of **Shiva Kant Jha v. Union of India (AIR) 2018 SC 1975** and the order of this Tribunal dated 10.7.2019 in O.A.No.180/702/2018 in the matter of **Sankaran Nair.K.P v. BSNL & Ors.** wherein this Tribunal has dealt this issue at length. The relevant portion of the aforesaid judgment of the Hon'ble Apex Court reads as under :

“12. With a view to provide the medical facility to the retired/serving CGHS beneficiaries, the government has empanelled a large number of hospitals on CGHS panel, however, the rates charged for such facility shall be only at the CGHS rates and, hence, the same are paid as per the procedure. Though the respondent-State has pleaded that the CGHS has to deal with large number of such retired 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 all times.

13. 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. 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 expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of 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 a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. 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. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.

14. This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the central government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force. In the facts of the present case, it cannot be denied that the writ petitioner was admitted in the above said hospitals in emergency conditions. Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. The doctors did his operation and had implanted CRT-D device and have done so as one essential and timely. Though it is the claim of the respondent-State that the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS rates and that too after following a proper procedure given in the Circulars issued on time to time by the concerned Ministry, it also cannot be denied that the petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals.

15. In the present view of the matter, we are of the considered opinion that the CGHS is responsible for taking care of healthcare needs and well being of the central government employees and pensioners. In the facts and circumstances of the case, we are of opinion that the treatment of the petitioner in non-empanelled hospital was genuine because there was no option left with him at the relevant time. We, therefore, direct the respondent-State to pay the balance amount of Rs. 4,99,555/- to the writ petitioner. We also make it clear that the said decision is confined to this case only.

16. Further, with regard to the slow and tardy pace of disposal of MRC by the CGHS in case of pensioner beneficiaries and the unnecessary harassment meted out to pensioners who are senior citizens, affecting them mentally, physically and financially, we are of the opinion that all such claims shall be attended by a Secretary level High Powered Committee in the concerned Ministry which shall meet every month for quick disposal of such cases. We, hereby, direct the concerned Ministry to device a Committee for grievance redressal of the retired pensioners consisting of Special Directorate General, Directorate General, 2 (two) Additional Directors and 1 (one) Specialist in the field which shall ensure timely and hassle free disposal of the claims within a period of 7 (seven) days. We further direct the concerned Ministry to take steps to form the Committee as expeditiously as possible. Further, the above exercise would be futile if the delay occasioned at the very initial stage, i.e., after submitting the relevant claim papers to the CMO-I/C, therefore, we are of the opinion that there shall be a time frame for finalization and disbursement of the claim amounts of pensioners. In this view, we are of the opinion that after submitting the relevant papers for claim by a pensioner, the same shall be reimbursed within a period of 1 (one) month.

17. In view of the foregoing discussion, we dispose of the petition filed by the writ petitioner with the above terms.”

6. This Tribunal is of the view that the present case is squarely covered by the order passed by this Tribunal as well as the judgment of the Hon'ble Apex Court in the matter of Shiva Kant Jha (supra). The medical reimbursement scheme is a beneficial legislation given by the employer in the welfare of their employees. The husband of the applicant had suffered a chronic disease, cancer, during the course of his employment and had sought due concurrence for getting treatment outside the SSA limit under the Medical Reimbursement Scheme. It is not the case of the respondents that the husband of the applicant has not suffered from such a chronic disease, cancer, as they have already reimbursed his medical claim submitted for getting treatment from AIMS, Kochi. Subsequently his case has been referred to some other institution ie. Lakeshore Hospital, Nettoor, Kochi for second opinion. The AIMS, Kochi itself recommended for second opinion where the respondents have initially permitted for undergoing treatment. The full attention of the family in on their patient whose condition was deteriorating day by day. Rules are made for preventing misuse of fund and not for denying genuine case like the applicant. The anxiety of the respondents perhaps may be that the reimbursement rules shall not be misused by the employees citing precedence. That is not the case here. The deceased employee has suffered cancer and later on died and the applicant claimed reimbursement of only genuine medical bills. It is pertinent to note that the deceased employee's initial bills pertaining to treatment at AIMS, Kochi has been reimbursed by the respondents.

.7.

7. Thus, while allowing the O.A., this Tribunal is of the considered view that given the peculiar circumstances of the case it may not be cited as a precedent. This Tribunal declares that applicant is entitled for reimbursement of the entire medical expenses incurred by her as her husband had enrolled himself under the Scheme after retirement and directs the respondents to pay the entire amount so claimed after duly verifying it from the concerned hospital. This exercise shall be completed within a period of four months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 3rd day of January 2020)

ASHISH KALIA
JUDICIAL MEMBER

asp

List of Annexures in O.A.No.180/00961/2018

- 1. Annexure A-1** – A copy of the BSNL Employees Medical Reimbursement Scheme (BSMRS).
 - 2. Annexure A-2** – A copy of the Additional Guidelines for the implementation of the BSNL Medical Reimbursement Scheme.
 - 3. Annexure A-3** – A copy of the Reimbursement of Medical Claim for retired employees of BSNL.
 - 4. Annexure A-4** – A copy of the enrolment card of the applicant's husband in the Medical Reimbursement Scheme of BSNL.
 - 5. Annexure A-5** – A copy of the Death Certificate issued by the Registrar of Birth and Death, Nettoor Municipality, Kerala State.
 - 6. Annexure A-6** – A copy of the Letter No.DGM(P&A)/GMT/PGT/CPGRAMS/2016-17/213 dated 3.12.2016 issued by the 5th respondent.
 - 7. Annexure A-7** – A copy of the Letter dated 6.7.2017 issued by Dr.Wesley.M.Jose the Clinical Associate Professor, Department of Medical Oncology, AIMS, Kochi.
 - 8. Annexure A-8** – A copy of the representation dated 4.8.2017 submitted by the applicant to the 4th respondent.
 - 9. Annexure A-9** – A copy of the Letter No.4641/IP Medl/AO(PC)/Pgt/2 dated 21.8.2017 issued from the office of the 4th respondent.
 - 10. Annexure A-10** – A copy of the representation dated 17.1.2018 submitted by the applicant to the 4th respondent.
 - 11. Annexure A-11** – A copy of the judgment dated 19.1.2018 rendered by the Hon'ble High Court of Kerala in OP(CAT) No.167 of 2017 as reported in 2018 ICO 29.
 - 12. Annexure A-12** – A copy of the order dated 19.9.2018 of this Hon'ble Tribunal in O.A.No.180/530/2017.
 - 13. Annexure A-13** – A copy of the identity card issued to the deceased husband of the applicant by the AGM(A) in the office of the 4th respondent.
-