

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1943 of 2001

New Delhi, this the 8th day of May, 2003

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

22

Shri B.M. Gulati
(Ex. Major AMC)
(Ex. Director Medical, ESIC)
New Delhi
S/o Shri Bharat Ji Gulati
R/o C-1/30 Main Wali Nagar,
Rohtak Road,
Delhi.

APPLICANT

(By Advocate: Shri Rajinder Gulati, proxy counsel for
Shri R.M. Tufail, Counsel)

Versus

1. Union of India
Ministry of Labosur,
Through its Secretary.
2. The Director General,
ESIC Kotla Road,
Bahadur Shah Zafar Marg,
New Delhi-110 002.

-RESPONDENTS

(By Advocate: Ms. Jyoti Singh)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

Applicant is a retired employee of Employees State Insurance Corporation (hereinafter referred to as ESIC) having retired from the post of Director (Medical) ESIC. The applicant alleges that as per the Government rules the applicant and his spouse Smt. Bimal Gulati is covered under the ESIC Scheme for medical treatment/reimbursement of medical expenses to the employees/retireed employees and their dependents including wife for that purpose. It is further states that the applicant had already paid life time

Ka

23

contribution.

2. The applicant alleges that his wife was admitted in the night intervening 4/5.8.1997 as she had suffered a severe heart attack where she was treated by the cardiologist. She remained there till 17.8.97 but her condition showed no improvement rather further deteriorated. On the advice of the doctors of ESIC, the patient was referred to Apollo Hospital in emergency for Angiography and for further treatment as no date was available for about 2 weeks in All India Institute of Medical Sciences as there was a strike in the Government Hospitals.

3. The applicant further submits that his wife in the Apollo Hospital was immediately admitted to ICCU and Angiography was performed on 23.8.97 and was advised to undergo immediate by-pass surgery as there was 90% blockade in both the main arteries. However, since her condition was quite critical as she was having low grade fever, therefore, surgery/operation was postponed and the patient was discharged on 5.9.97. On 5.11.97 her condition further deteriorated and on the advice of the Heart Specialists, she was shifted to Escorts Heart Institute and Research Centre (hereinafter referred to EHIRC) in an emergency where she was advised immediate by-pass surgery. Since she was suffering from fever for last 3 months she was advised by-pass surgery by the Pole Hole Surgery method and she was also advised Angioplasty with stent to be fixed in the right Coronary Artery. Thus as per the medical advice, the patient had to

K

undergo two operations so by-pass surgery was performed on 11.11.1997 and the other on 24.11.1997 and she was discharged on 28.11.1997.

4. It is further submitted that the Port Hole Surgery is the latest technology and is available in the EHIRC only.

5. For all these the applicant had spent a sum of Rs.1 lakh as his wife was indoor patient at Apollo Hospital and he had further incurred a sum of Rs.2,40,000/- for two heart operations; one Angioplasty and the other port hole surgery for which the bills were submitted. Applicant had further spent on post operative treatment. Thus bill for a sum of Rs.3,52,338/- was submitted against which a sum of Rs.77,000/- had been released so far as part payment and without giving any details why the remaining amount which has not been reimbursed so far.

6. It is further submitted that the applicant has been making request for grant of ex-post facto sanction in case of emergency expenses incurred at Apollo Hospital and prior sanction for expenses incurred at EHIRC.

7. It is further alleged that the factum of the treatment and the emergency of the same stands accepted by the respondents as they had made part payment. The applicant has a further grievance that discriminatory treatment is meted out to him as the respondents have in

h

25

..4..

certain other cases made direct payment to the hospital for its employees taken on post-surgery and permission has been accorded post-facto..

8. It is further stated that one Dr. Satish Sharma husband of Dr. Mrs. Shashi Prabha retired Medical Commissioner, ESIC who was also operated in EHIRC for Angioplasty has been reimbursed a sum of Rs.1,22,720/-. Thus applicant submits that he is entitled to the reimbursement of the entire sum and prayed that the balance amount may be paid to him with interest..

9. The respondents are contesting the OA. Respondents have taken a preliminary objection that the applicant is neither a Government pensioner nor CGHS beneficiary.. He is only a retired employee of the ESIC and is entitled to medical facility that are available at ESI dispensaries, ESI hospitals as are recognised for the ESI beneficiaries covered under the ESI Scheme in Delhi.. The ESI scheme has recognised AIIMS and G.B. Pant Hospital only..

10. It is further stated that the wife of applicant was admitted at ESI Hospital where she was attended by a team of doctors including cardiologist.. However, the patient was referred to RML Hospital/AIIMS/GB Pant Hospital thereby giving a wide choice to the applicant. The applicant on his own took the patient to Apollo Hospital where Angiography was done and further advised to undertake by-pass surgery. Though surgery could not be performed at Apollo Hospital but the

h

applicant took the patient on 5.11.1997 to EHIRC where two operations were performed but he did not take the patient to any of the three reputed hospitals where the patient was referred by the Cardiologist of the ESI Hospital even though the period of 3 months was used for treatment in two other hospitals. The applicant had ignored the reference to any of the three hospitals and even discarded the Apollo Hospital and took the patient to EHIRC.

11. It is further stated that the applicant has been paid a sum of Rs.77,000/- towards medical expenses which would have been incurred if the applicant had taken the patient to AIIMS, as advised by the doctors of ESIC.

12. It is further stated that the pensioners of ESIC are not covered and were never covered under the CGHS. They are provided medical facilities through ESI Medical Scheme so the applicant is not entitled to the amount spent by him in Apollo and Escorts. However, the respondents have taken a lenient view and made payment of Rs.77,000/- which the applicant would have spent had he taken the patient to AIIMS.

13. As regards the case of Dr. Satish Sharma is concerned, it is denied that the case involved ex-post facto approval or any type of relaxation of rules. The then Medical Commissioner had obtained permission of Headquarters Office to go to Escorts instead of AIIMS as her husband was referred to EHIRC and even in the permission it was mentioned that the amount of

h

(22)

reimbursement would be restricted to the estimate given by the AIIMS. Full reimbursement was not allowed to her at rates of Escorts but only at the rate of AIIMS.

14. Rejoinder to this was also filed wherein the applicant submitted that the applicant is an ex-ESIC Officer which comes under the Ministry of Labour and all the rules and regulations of Union of India are applicable therein. Moreover the applicant has paid life term contribution for medical treatment/reimbursement of medical expenses.

15. As regards the condition of the wife of the applicant is concerned, the same did not improve till 17.8.1997 and on the advice of the Cardiologist, the patient was shifted to Apollo Hospital. It is further stated that when the applicant was advised to take the patient to other hospital there was strike in all other Government Hospitals and patient was shifted in Ambulance of the ESIC and besides that there was no date available for 2 weeks even in AIIMS. As the condition further deteriorated, so she was shifted to EHIRC and got the treatment there so she was entitled to full reimbursement.

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

17. The learned counsel for the applicant submitted that as per the judgment reported in 1992 RLR (Note) DB 133 if a patient in emergency, an employee goes to an unregistered hospital then he cannot be denied

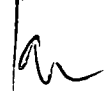
[Signature]

payment. It was held that in emergency cases at times it is not possible to get the endorsement from the authorised medical attendant, before patient is admitted to the hospital. Seeking endorsement results in loss of precious time which is very important for life of the patient. On the same point he has relied on various judgments such as :-

(1) 1995 (1) AD (Delhi) 4, AIR 1997 SC 1225, 1994 (1) SLR 283, 1998 II AD (SC) 449 etc..

18. However, the applicant's wife had taken treatment when she was taken from Apollo to EHIRC. The applicant should have been reimbursed for the actual amount spent by him.

19. On the contrary the counsel for the respondents referred to a judgment delivered by a Division Bench of this Tribunal in OA 1879/2000 entitled as Harpran Singh Puri VS. The Director General, ESIC and Another Co-ordinate Bench of this Tribunal in OA 602 2002. Both these cases pertained to the pensioners of ESIC and in the Division Bench judgment it was held that the applicant was referred by ESI Hospital to AIIMS/Batra or GB Pant but the applicant had gone to G.B. Pant Hospital as the senior consultant had asked him to come in September, 1993. Therefore, he on his own went to EHIRC instead of going back or taking second opinion from other permissible hospital, so it was held that the applicant was not to be paid full reimbursement. In this case I find that the applicant was initially taken to ESI Hospital and from there to Apollo and there he did not



undergo surgery and he had waited for such a long period and surgery was performed on 11.11.97/24.11.97. The intervening gap between the admission of the patient and operation done at the hospital, i.e., by-pass surgery and other operations at EHIRC would go to show that there was no emergency and the applicant had gone to EHIRC of his own volition and following the judgments of this Tribunal, I am of the considered opinion that the applicant was not entitled to have treatment from EHIRC so he is not entitled to have full reimbursement for which he had been billed by EHIRC. But since the department has paid reimbursement at the rates of AIIMS had the applicant taken treatment from AIIMS then probably full reimbursement would have been made by the respondents as a sum of Rs.77,000/- has already been paid to the applicant.

20. The applicant has referred to a judgment reported in AIR 1997 SC 1225 entitled as State of Punjab and Others Vs. Mohinder Singh Chawal and submitted that if a particular treatment is not available at a particular hospital then the applicant had a right to take treatment from some other hospital. The applicant then submitted that since port hole technique was available only at EHIRC she is entitled for the full reimbursement. However, the applicant had not consulted AIIMS at all which was a recognised hospital. If Port Hole was not available there may be some other technique available or even AIIMS might have referred applicant further to EHIRC if that technique was essential.

h

21. The judgment relied upon by the applicant in the case of Ram Dhani VS. Delhi Administration reported in 1992 Rajdhani Law Reporter (Note)(DB) 133. In that case it was held that in emergency cases at time it is not possible to get the endorsement from the authorised medical attendant before patient is admitted to the hospital. Seeking endorsement results in loss of precious time which is very important for life of the patient. But in this case the applicant had obtained endorsement and was referred to RML/AIIMS/GB Pant. From the facts of the case it is quite manifest that there was no case of emergency as the patient should have first gone to RML, GB Pant or AIIMS but instead of going there the applicant on his own violation had gone to Apollo and there the patient remained admitted for some time and thereafter discharged and after a lapse of some time the patient had been taken to EHIRC so this judgment does not apply.

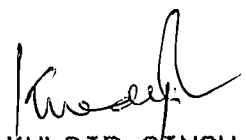
22. As regards judgment in the case of P.K. Jain Vs. Government of NCT of Delhi and Others reported in 1995 I AD (Delhi) 4 is concerned, this pertains to the claim of Medical Reimbursement filed by the District and Sessions Judge, Delhi and the court found that the District Judge was entitled to Medical Reimbursement as per All India Service Rules which is not the case in hand because the applicant is governed by ESIC Scheme not even by the CGH Scheme.

23. The counsel for the applicant then referred to a judgment of Hon'ble Supreme Court reported in AIR 1997 SC 1225 entitled as State of Punjab and Others VS.

ku

Mohinder Singh Chawla. In that case the patient was given permission with the approval of the Medical Board to get treatment outside State and he was referred to AIIMS so the expenses was incurred by the applicant but he was not paid the room rent spent. Similarly in case of Sandhu R. Pall Vs. State of Punjab and Others reported in 1994 (1) SLR 283 the applicant was not allowed reimbursement of the expenses incurred though the same was recognised by the State. So the court allowed the same. But in this case the hospital is not recognised by the ESI so the judgments relied upon by the respondents fully applies to the case of the petitioner as he was referred only to AIIMS, RML, G.E. Pant. Since the department has reimbursed at the then prevailing rates admissible at the hospital of AIIMS so I do not find any grievance about the reimbursement which has been made to the applicant at the AIIMS rate as the applicant had not taken the treatment in an emergency condition from EHIRC and moreover EHIRC was not recognised by the Health Scheme applicable to ESIC retirees.

24. In view of the above, OA does not call for any interference and the same is dismissed. No costs.


(KULDIP SINGH)
MEMBER (JUDL.)

/Rakesh