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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 2481 of 1998 decided on 26.5.1999

Name of Applicant : Shri Bimelendue Chakraborty

By Advocate : S/Shri M.S.Rekhi & B.L.Babbar

Versus

Name of respondent/s Union of India & others

By Advocate : Shri V.S.R.Krishna

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes
2. Whether to be circulated to the other Benches of the Tribunal. -No

N. Sahu
(N. Sahu)
Member (Admnv)

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2481 of 1998

New Delhi, this the 26th day of May, 1999

Hon'ble Mr. N. Sahu, Member(Admnv)

Shri Bimelendu Chakraborty, s/o Late
Sh. M.N.Chakraborty, R/o Qr. No.
P/125/3 Kabul Lines, Delhi
Cantt-110010

- APPLICANT

(By Advocates S/Shri M.S.Rekhi &
B.L.Babbar)

Versus

1. The Union of India (through) The
Secretary, Ministry of Defence, South
Block, DHQ P.O., New Delhi-110011.
2. The Engineer-in-Chief, Army
Headquarters, Kashmir House, DHQ
P.O., New Delhi-110011.
3. The Chief Engineer, HQ Eastern
Command, Fort William,
Calcutta-700021.
4. The Garrison Engineer (Central),
Delhi Cantt-110010.

- RESPONDENTS

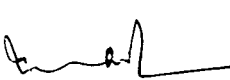
(By Advocate Shri V.S.R.Krishna)

O R D E R

By Mr. N.Sahu, Member(Admnv)

The relief prayed for in this Original Application is to quash the impugned order dated 30.10.1998 (Annexure-P-1). The impugned order states that the cost of Pacemaker was fixed at Rs.26,000/- and, therefore, claim of the applicant was restricted to this amount only.

2. The background facts leading to this dispute briefly are as under -

 By an application dated 13.2.1996 the applicant had requested for sanction of a Pacemaker. Sanction for the same was accorded and an advance to

the tune of 80% of the cost of Pacemaker was allowed and paid by the competent authority i.e. the Chief Engineer Eastern Command based on quotation and estimate given by SSKM Hospital, Calcutta. The instrument was recommended by a specialist. The applicant's grievance is that once the specific sanction was accorded for the total cost of Pacemaker prevailing instructions on the subject must have been taken into account. It is further urged, by referring to the instructions at serial no.3 of the Swamy's handbook under the heading "artificial appliances", that no restriction regarding cost of Pacemaker is found in the said instruction as full reimbursement has to be paid if prescribed by a specialist of Government and recognized hospital. Secondly, in para 3(ii) of GOI Ministry of Health letter dated 15.5.1996 the instructions are as under-

"In case of major illness of By Pass Surgery, Kidney Transplant, etc. the advance may be limited to 80% of package deal, wherever it exists or the amount demanded by the hospital concern in other cases and the balance payable on final adjustment."

3. Thus, according to the applicant the instructions fully support his claim. He also cited the decisions of the Hon'ble Supreme Court in the case of State of Punjab Vs. Mohinder Singh Chawla, AIR 1997 SC 1225 wherein it is held that right to health is integrated to the right to life and the Government is under a Constitutional obligation to provide health facilities. It is the duty of the State to bear expenditure incurred by the Government servant. He also cited the decision of Surjit Singh

Vs. State of Punjab, (1996) 2 SCC 336 wherein it was held that the claimants have a fundamental right to self preservation.

4. The respondents admit that the applicant was recommended immediate implantation of a Permanent Pacemaker as a life saving measure. Quotations were called for by the GE Ishapore from M/s Cannon Devices Private Limited, being the authorized dealer, and accordingly sanction for Rs.87894/- being 80% cost of Pacemaker was accorded by the Chief Engineer, Eastern Command and the balance of Rs.21,996/- was directly paid by the officer to the firm M/s. Cannon Devices Private Limited. It is now contended, however, that the ceiling limit for the Pacemaker was stated to be Rs.26,000/- at the time Pacemaker was implanted. Therefore, the respondents say that although the subsequent instructions dated 12.6.1996 have raised the cost of Dual Chamber Pacemaker, it would not be applicable to the case of the applicant. The instructions dated 12.6.1996 fixes the ceiling limit for reimbursement of the cost of Coronary Stents, Rotablator, Single Chamber Pacemaker and Dual Chamber Pacemaker. It is clearly stated that cost of Pacemaker (Dual Chamber) would be Rs. 1,15,500/-. Even here the instructions are as under -

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"The cost of Coronary Stent mentioned above will be admissible over and above the cost of Angioplasty and the cost of Rotablator and above the charges of Balloon Angioplasty. The Probbator in a patient should not exceed two. However, in exceptional circumstances, when the use of more than two becomes necessary to bail out the patient, prior permission of Director CGHS, will have to be obtained.

The facility for implantation of the aforesaid devices can be sanctioned by CGHS beneficiaries on the recommendations of cardiologist and Medical Supdt. of the Government hospital and private hospitals/ Institutions approved under the CGHS."

5. I have no hesitation in my mind that the respondents have misconceived the scope of restricting the cost of Pacemaker. Right to life under Article 21 of the Constitution implicitly involves the duty of the State Government to look after health of the Government servant. The only exception made by the Supreme Court is that in case of hospitalization charges the State has a power to fix a ceiling limit because of the resource constraints. To cite an example, a treatment can be had for a particular disease in any of the hospitals established by the Government including AIIMS but the same treatment can be had also in a hospital like Appollo or Batra or Escorts other hospitals which provide luxurious surroundings and facilities, the treatment remaining the same. It is here that the Ministry of Health stopped in and prescribed a package fixing a ceiling limit for certain operations, particularly in respect of urinary diseases and heart diseases. The Hon'ble Supreme Court in State of Punjab Vs. Ram Lubhaya Bagga and others, 1998 SCC (L&S) 1021 has upheld the right of the State to prescribe this limit but in the case of Devinder Singh Shergil Vs. State of Punjab, (1998) 8 SCC 552 the Hon'ble Supreme Court has directed that the cost of the medicines are not the subject matter of a ceiling limit. In my view a Pacemaker is part

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of the treatment and if a Specialist has approved it and certified that such Pacemaker is a necessary part of the treatment, then the respondents have no right under law to restrict the cost of the Pacemaker. This flows from the interpretation given by the Hon'ble Supreme court to Article 21 of the Constitution read with Articles 46 & 47. The restrictions imposed by the Ministry of Health are applicable only to hospitalization and not to the cost of medicines and artificial appliances. Even so, coming to the facts of this case it is totally incomprehensible as to how when the Director General of Medical Services approved the treatment and also allowed reimbursement by sanctioning 80% of the cost of the Pacemaker, the audit department questions the said decision on the ground that at the time the implantation was done the ceiling was Rs.26,000/-. This is an absurd stand unsupported and unjustified either by common sense or by any known law on the subject. I have mentioned above that the Hon'ble Supreme Court categorically upheld the full reimbursement of all medicines and consumable and pharmaceutical items. The Medical Attendance Rules have not put any limit. The so called limit of Rs.26,000/-, therefore, cannot be justified. Such a limit can be ignored as being contrary to the law laid down on the subject by the Hon'ble Supreme Court in Devinder Singh Shergil's case (supra) on the one hand and contrary to the Medical Attendance Rules on the other.

[Handwritten signature]

6. The applicant cannot be made to suffer if the respondent - Ministry of Health does not update the price of appliances in accordance with the latest techniques and price range. If the medical specialist says a dual chamber Pacemaker is necessary, the cost of the same has to be reimbursed and a minion of the Ministry of Health cannot be heard to restrict the cost on the ground of an unrevised otiose instruction.

7. In the result, the OA is allowed. The amount claimed for by the applicant shall be paid to him within four weeks from the date of receipt of a copy of this order along with interest of 12% per annum.

Narasimhasastry
(N. Sahu) 24/5/98
Member (Admnv)

rkv.