

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 893/1998

New Delhi, this 6th day of April, 1999

Hon'ble Shri S.P. Biswas, Member(A)

(A)

Jitender Mohan
s/o Shri Ram Saran
C-89, Lohia Nagar
Ghaziabad-201001
(applicant in person)

Applicant

versus

Director General
Health Services
M/Health & Family Welfare
Nirman Bhavan, New Delhi

Respondent

(By Shri Madhav Panicker, Advocate)

ORDER

The applicant herein had undergone treatment for heart-ailment (Angioplasty-PTCA) in Escorts Heart Institute & Research Centre (EHIRC for short) on a reference by Dr. RLM Hospital in the year 1993. Following the treatment, the applicant had paid Rs.74,945/- to EHIRC as per details in Annexure A-7 towards expenditure incurred by him. Respondent reimbursed a total of Rs.40,000 on the basis of details in Annexure A-5 of the OA.

2. Being aggrieved, the applicant approached this Tribunal seeking full reimbursement through OA No. 1655/06 which was decided on 20.5.97 with the following orders:

"Further having regard to the facts and the decision of the Supreme Court in State of Punjab & Ors. v. Mohinder Singh Chawla etc. JT 1997 (1) SC 416, the latter rejecting applicant's claim dated 20.8.93 is quashed and set aside. The respondents are directed to reconsider the case of the applicant, keeping in view the observations made above for reimbursement of the medical bills which

he has incurred for PTCA treatment at Escorts Heart Institute and Research Centre in accordance with the relevant instructions/OM dated 18.3.92; The admissible amount so due shall be reimbursed to the applicant within a period of three months from the date of receipt of a copy of this order"

(5)

3. Pursuant to the aforesaid order of this Tribunal, respondent sanctioned additional amount of Rs.7050 as at Annexure A-1, thus reimbursing a total of Rs.47,050 out of Rs.74,945 incurred by the applicant. In other words, an amount of Rs.27,895 is now being claimed by the applicant in the present OA.

4. Applicant, in support of his claim, cites the judgement of the Hon'ble Supreme Court in the case of State of Punjab Vs. Mohinder Singh Chawla (supra). It has been held therein that "If the Government servant has suffered an ailment which requires treatment at a specialized approved hospital and on reference whereat the Government servant had undergone such treatment therein, it is but the duty of the state to bear the expenditure incurred by the Government servant. Expenditure, thus incurred requires to be reimbursed by the State to the employee".

5. Respondent has opposed the claim on the grounds as hereunder:

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(i) Earlier i.e. at the time of treatment, EHIIC was recognised only for two procedures i.e. Angiography and By-pass surgery and not for Angioplasty which is the case here. (16)

(ii) Case of M.S.Chawla (supra) is different from the facts and circumstances of the present case. In that case the benefit was permitted for treatment in a private recognised hospital in Delhi as facilities were not available in the State of Punjab, but in this case the applicant belongs to Delhi and was permitted for treatment as per AIIMS rates. As such, the said judgement is not applicable in the present case;

(iii) Hospital bill for Angioplasty (PTCA) is for Rs.68,475 and permission was granted for Rs.40,000 as per AIIMS rates. The letter from EHIIC dated 4.8.92 states that the cost of Angioplasty included cost of disposables including the Angioplasty balloon guide wire, contrast medicines, films etc. In view of the above, only Rs.40,000 was admissible. No payment over and above this amount either can be made or is permissible. Hence nothing is due to the applicant from the answering respondent, the counsel would contend.

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6. In the face of such rival contentions of contesting parties, we have to only adjudicate the legality of the claim of the applicant for an amount of Rs.27,895 only. It is not in doubt that the applicant is a CGHS beneficiary and cases of all such beneficiaries are governed by the CS(MA) Rules, 1944. Portions of the rules relevant for the disposal of this OA are reproduced below:

"Sub-rule (15) of Rule 8 of the CS(MA) Rules lays down that the approval of the Government is conveyed for reimbursement of medical expenses under the said Rules for specialized treatments like heart, kidney, coronary, etc. at par with CGHS beneficiaries as only in these cases a package deal arrangement with private hospitals for CGHS beneficiaries exist at present. The aforesaid rule position has been inserted below Rule 8 on 31.10.1994.

Rule 8 provides as under:

8 (i) Charges for services rendered in connection with but not included in medical attendance on, or treatment of, a patient entitled, free of charge, to medical attendance or treatment under these rules, shall be determined by the authorised medical attendant and paid by the patient"

7. It is not also in doubt that EHIRC is an authorised Hospital for the purpose of treatment the applicant had undergone. In fact, he was referred to Escorts by RML Hospital itself. Apparently, reference was made based on the availability of unavoidable treatment needed by the applicant. On this basis, respondent's stand that the applicant could not have gone for Angioplasty in Escorts can hardly be accepted as a valid ground. If the respondent takes the plea that applicant could be paid only at AIIMS rates even though EHIRC is a recognised hospital, then RML Hospital coming under

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respondent should have suggested applicant's admission/treatment only in AIIMS. Or, the applicant should have been alerted apriori on this point. It may also be mentioned that rates in government recognised hospitals for treatment of eligible government officials are less than those rates of EHRC that are applicable to private patients. This is because there is an agreement between the Escorts and the Government (Ministry of Health) in ~~respect~~ of providing treatment to CGHS beneficiaries. *law*

8. There are instances where reimbursement has been allowed at Escorts rates even when the treatment had taken place at London (see para 12 in the judgement of Surjit Singh Vs. State of Punjab & Ors. 1996 (2) SC 336). In the aforesaid case, the medical reimbursement claim of the applicant therein was examined and was held as admissible at the rate admissible in Escorts and denial of such rate was rejected. The apex court examined the medical reimbursement claims of the applicant and held as under:-

"9. The policy, providing recognition for treatment of open heart surgery in the Escorts specifically came to be examined by a Division Bench of the Punjab & Haryana Court at Chandigarh titled as Sadhu R. Pall Vs. State of Punjab, 1994 (1) SLR 283 (P&H), wherein the claim of the then writ petitioner to medical reimbursement was accepted when in order to save his life he had got himself operated upon by the Escorts and the plea of the State that he could be paid at rates as prevalent in the AIIMS was rejected. SLP No. 22024 of 1995 against the said decision was dismissed by this Court on 2.2.94.

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12. The appellant therefore had the right to take steps in self-preservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, barefacedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternative hospital as per policy"

9. I find that there are specific instructions in OM No.S-14025/4/90-MS dated 26.7.90 to take care of such circumstances. The said order mentions that:

"Only such cases which require clarification of doubts on specific points or need special sanction in relaxation of rules should be referred to this Ministry and only through Directorate General alongwith the comments/recommendation of the concerned Ministry/Department at the level/approval of an officer not below the rank of Joint Secretary"

10. In the case of Mohinder Singh (supra), the apex court went a step ahead and contended that since the patient was admitted, had taken treatments in the EHIIC and had incurred the expenditure towards room charges, inevitably the consequential rent paid for the room during his stay is an integral part of the expenditure incurred for the purpose of treatment. Consequently, the government was ordered to reimburse the expenditure incurred for the period during which the patient stayed in the approved hospital for treatment.

11. Respondent has recorded no reasons as to why they did not consider it necessary to take advantage of the provisions in the aforesaid OM dated 26.7.90. It is not justifiable for the respondent to have referred the applicant for

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treatment in a recognised hospital but allowed payment only at AIIMS rates. Respondent has not shown any orders issued by ~~Minister~~ by the Ministry of Health about applicability of AIIMS' rate even in cases where treatment is taken from a recognised Hospital, that too on an advise of ~~an~~ authorised Medical Attendant.

12. In the light of detailed discussions aforesaid, the OA succeeds on merits and is allowed with the following directions:

- (i) Applicant shall be paid the residual amount of Rs.27,945 due to him by the respondent within a period of 3 months from the date of receipt of a certified copy of this order;
- (ii) In case if it is so required, the applicant shall hand over essentiality certificate for the purpose of obtaining special sanction needed in such cases and the respondent is directed to take special sanction, if at all required, in terms of the special provisions contained in OM referred to above but within the time limit as in sub-para (i) aforementioned.

There shall be no order as to costs.



(S.P. Biswas)

Member (A)

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