

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1472/97

Hon'ble Sh. R.K. Aahooja, Member (A)

New Delhi, this the ~~15~~ day of March, 1998

Shri B.S.Jain
s/o late Shri M.S.Jain
retired Deputy Director of Admn.
Director General
All India Radio
Parliament Street
New Delhi - 110 001.
r/o A2/174, Janak Puri
New Delhi - 58.

... Applicant

(Applicant in person)

vs.

1. Union of India through
Secretary to the Govt. of India
Ministry of Health & Family Welfare
Department of Health
Nirman Bhawan
New Delhi.

2. Director General
Directorate General of Health Services
Central Govt. Health Scheme(CGHS)
R & H Section, Nirman Bhawan
New Delhi.

... Respondents

(By Shri M.K.Gupta, Advocate)

O R D E R

The applicant is a retired Dy. Director of Administration, Directorate General of All India Radio, Akashwani Bhawan entitled to CGHS facility for himself and for his family including his father who is dependent on him. He is aggrieved by the orders A-1 and A-2 whereby his medical claim for reimbursement for the treatment of his father has been refused.

2. The case of the applicant is that his father Late Shri M.S.Jain was suffering from Prostate and urine blockade on 17.5.1995 when he was taken to LNJP Hospital. However, he was not operated upon for Prostate and he was sent home with a catheter. This did not provide relief to his father. There was

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a danger that urine blockade might cause further complications.

As efforts to get him operated in LNJP Hospital failed and also because expert surgeons for such a treatment were away on leave, the applicant says he was left with no alternative but to take his father to TRS Hospital, a private hospital, where he was operated upon by a renowned surgeon, Dr.C.M.Goyal. The first of the reimbursement claims relating to the treatment of applicant's father at TRS Hospital is for Rs.17,240/-.

3. The applicant also submits that his father fell from his bed while trying to stand and fractured his femur bone.

There was a lot of internal bleeding and in view of the acute emergency he was taken to Janak Hospital another private hospital on 3.7.1995. Thereafter he was taken to AIIMS where he breathed his last on 23.7.1995. The applicant submits that he incurred expenditure of Rs.31,963.75 at Janak Hospital and for another Rs.3,540/- for treatment of his father in AIIMS. While allowing the reimbursement for the treatment at AIIMS, the respondents did not allow the claim in respect of Janak Hospital, on the ground that it was a non-recognised Govt. Hospital.

4. The applicant submits that in both the cases the applicant's father had to be taken to the private nursing homes due to the need for emergency treatment, therefore, he is entitled to full reimbursement.

5. The respondents in reply submit that the requisite facilities for treatment in such cases are also available in all the Govt. hospitals including LNJP, AIIMS. The condition of large prostrate occurs over a period of time and not suddenly. Therefore its treatment 'cannot' be said to be a matter of

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emergency and hence cannot be taken in a private hospital. In case of fracture of femur bone also the applicant's father could have been taken to Deen Dayal Upadhyay Hospital which is also near to his residence.

6. I have heard the applicant in person and Shri M.K. Gupta for the respondents. The applicant argued that he was obliged to take his father to TRS Hospital because proper attention had not been given at LNJP Hospital and the surgeons there had refused to undertake the requisite operation. Later, when there was a blockade of urine, he found that all the specialists were away on leave, that being the vacation period of the medical colleges. I am unable to agree with the applicant that taking the patient to TRS Hospital was a matter of dire necessity. The patient had been seen in LNJP Hospital and the applicant could not substitute his judgment to that of the doctors with regard to treatment his father needed. In this circumstance, taking his father to TRS Hospital was a matter of choice and not a matter of emergency. Hence, the respondents are justified in refusing the first claim.

7. In respect of the second claim, i.e., treatment in Janak Hospital I agree with the applicant that it was a case of emergency. Ultimately the patient was taken to AIIMS but there also he could not be saved. It has not been shown by the respondents that Deen Dayal Upadhyay Hospital was nearer to applicant's residence; they only say that fracture of bone does not indicate danger to life. The very fact that the patient did not survive is an adequate commentary on the nature of the injury suffered. It is thus understandable that the applicant, in the circumstances, and considering the age of his father treated it as an emergency. In any case following the ratio of Surjeet Singh Vs. State of Punjab and Others, JT 1996(2) SC 28

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the reimbursement should be allowed to the applicant to the extent of charges at best possible place where the applicant was entitled to the treatment of his father, which in this case is AIIMS.

8. Accordingly, in the light of the above discussion, this OA is partly allowed. The respondents are directed to reimburse the applicant for the treatment of his father to the extent of charges that would have been incurred in the nursing home at the AIIMS for similar treatment in respect of fractured bone femur. The same should be calculated and paid within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

/rao/

Rao
R.K. AHOOJA
MEMBER (A)