

Central Administrative Tribunal
Principal Bench

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O.A No. 2171/1994

New Delhi, this the 21st day of Nov., 1995

Hon'ble Shri B.K.Singh, Member (A)

Shri K.P.Manglani,
s/o Late Shri Paman Dass
r/o B-17/214 Pharma Apartments,
88, I.P.Extension,
Delhi- 110 092.

...Applicant

(By Ms. Bharti Sharma, Advocate)

Versus

1. Delhi Administration through the Secretary, Medical Govt. of National Capital Territory of Delhi, 5, Sham Nath Marg, Delhi.
2. The Under Secretary (Medical), Govt. of N.C.T., 5, Sham Nath Marg, Delhi
3. Director Health Services, Govt. of N.C.T. of Delhi (Delhi Admn.) E-Block, Saraswati Bhawan, Connaught Place, New Delhi.
4. Director, Directorate of Education, Delhi Admn., Old Sectt., Delhi.
5. Deputy Director (A.R.), Directorate of Education Delhi Admn., Old Sectt., Delhi.
6. The Administrative Officer (Gazetted Officer) Cell, Directorate of Education, Delhi Administration, Delhi.

...Respondents

(By Shri Rajendra Pandita, Advocate)

.....2 p/-

ORDER (ORAL)

delivered by Hon'ble Shri B.K.Singh, Member (A):

This O.A. No. 2171/1994 is directed against the refusal of the respondents to re-imburse the expenditure incurred by the applicant on his bye-pass surgery in All India Institute of Medical Science (AIIMS).

The admitted facts of this case are these. The applicant was recruited as a L.D.C. in 1955 under the Directorate of Education, Delhi Administration and was promoted at the fag end of his service career as Superintendent Govt. Girls Sr. Secondary School, Laxmi Nagar. He had some heart problem and he/went for consultation at the N.D.M.C. Poly-clinic at Bhagat Singh Marg, run by a state owned agency of Delhi Administration. Dr. Mrs. M. Bhardwaj of the said Clinic suggested a bye-pass surgery on 10.11.90. The applicant was suffering from coronary artery disease. He suffered a heart attack on 12.11.1990 and was taken in an unconscious state and admitted in the Intensive Care Unit of G.B.Pant Hospital, where he remained as an indoor patient from 12.11.1990 to 24.11.1990. His angiography was done in G.B.Pant Hospital which indicated 100% blockage of two arteries. The Medical authorities could not conduct another test of angio of LVEDP of the applicant as there was an air bubble in the third artery. There is an averment to the

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effect in the D.A. that Dr. K.K.Sethi, Cardiologist informally advised the applicant to undergo bye-pass surgery at AIIMS or some foreign hospital due to the presence of the air bubble in the third artery and that LVEDP test could not be conducted on account of this air bubble.

The Doctors working in G.B.Pant Hospital did not carry out a bye-pass surgery and discharged him on 24.11.1990.

It is admitted that he made an application on 28.11.1990 through proper channel to Director of Health Service, Govt. of N.C.T. Delhi for grant of permission in accordance with the rules for bye-pass surgery at AIIMS. A copy of the same has also been filed and enclosed with the D.A. as Annexure A.1.

There was no response from the Director, Health Services in this regard. In the light of the advice by the doctors both at N.D.M.C. Polyclinic and G.B.Pant Hospital and in view of his critical condition, he was admitted in AIIMS on 15.1.1991. After conducting various tests, open heart surgy was recommended and an estimate of Rs. 35,000/- was given to him by the Assistant Professor which is enclosed as Annexure A.2. The applicant made arrangement for the said amount and deposited the same with AIIMS through a demand draft and the bye-pass surgery was done on 30.1.1991 and he was discharged on 8.2.1991. The bills submitted by him were returned with objections.

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Aggrieved by the action of the respondents, this O.A. was filed on 26.10.1994. The reliefs prayed for in the O.A. are as follows:-

- a) to direct the respondents to pay the said amount of Rs. 33,080/- claimed by the applicant vide his reimbursement claim dated 2.4.1991 immediately;
- b) to direct the respondents to pay 18% interest per annum on the aforesaid amount of Rs. 33,080/- since April, 1991.

On notice, the respondents filed the reply and contested the applicant and grant of reliefs prayed for.

Heard the learned counsel for the parties and perused the records of this case.

The learned counsel for the applicant stated that inspite of the fact that the applicant had written to the Director Health Services of the Govt. of N.C.T. Delhi but no action was taken by him to call the Medical Board and to refer the matter to AIIMS and since the heart condition was deteriorating and the applicant had received the advice from Mrs. M. Bhardwaj of N.D.M.C. Polyclinic, who was Heart Specialist and also from G.B.Pant Hospital and since the matter was getting delayed for grant of permission, he made arrangement for Rs. 35,000/- and underwent the bye-pass surgery in the AIIMS. She further said that if it was not a case where two arteries were completely blocked, the AIIMS would not have recommended and performed a bye-pass surgery on the applicant.

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The learned counsel for the respondents raised preliminary objection that this application suffers from non-joinder of necessary parties. He argued that the Ministry of Health of the Union Govt. and Ministry of Home Affairs should have been impleaded as parties. The C.G.H.S. facility which is available to the Central govt. employees is under the control of Director, C.G.H.S. The applicant is not a central Govt. employee. He is an employee of the Govt. of N.C.T. Delhi which has its own medical facilities and has its own rules. The employees of Delhi Administration are not governed by the Central Govt. Health Scheme. Therefore, it is not necessary to make the Ministry of Health, Govt. of India as a party, since they have nothing to do with the re-imbursement of these medical bills. Though it is true that the Administration of Delhi is controlled by Home Ministry but they are also not concerned with such routine matters as re-imbursement of medical bills etc. The Home Ministry is the Cadre controlling authority for AGMUT and in that capacity they have to discharge some statutory functions which they are doing. They do not come anywhere in the picture in the instant case and as such they are not the necessary party. This preliminary objection therefore, is not tenable.

The second objection raised was about limitation. There has been some delay in filing the application and it is also admitted that an application for condonation

of delay has not been filed. A perusal of the record itself shows that he had been approaching the authorities. It is true that after filing the first representation he should have come within six months before the Tribunal for redressal of his grievance. Admittedly, this has not been done. The applicant retired on 31.5.1993 and he pursued the matter with the authorities after being discharged from AIIMS and also before that he had written to the Director, Health Services. It was the ~~bounden~~ duty of Director, Health Services to ask for documents medical certificates etc. which suggested that he should undergo a bye-pass surgery. Nothing prevented from the Director, Health Services/ obtaining all the necessary documents and medical certificates for calling the Board to refer the matter to AIIMS as per rules. This burden has not been discharged and no reasons have been recorded as to why the Director, Health Services did not consider it proper to call a Medical Board to process the case of the applicant and any papers and documents wanted could have been submitted by the applicant, if called for. Thus, if the applicant did not follow the procedures laid down properly, the respondents also have not followed the practice and procedure which they were under obligation to follow. Thus equity matches equity in this case. Both are guilty of the violation of the said procedure and



practices. The law of limitation cannot be invoked in a matter where bill has been submitted by the AIIMS and the money was arranged by the applicant and paid for undergoing the bye-pass surgery. The Tribunal cannot stand on such technicalities of law of limitation or on the non-joinder of necessary parties. Learned counsel for the applicant relied on a judgement given by Hon'ble Delhi High Court in Civil Writ Petition No. 2612/93 where a similarly situated person was granted the relief of re-imbursement of expenditure ignoring the technical objections raised by the respondents. In that judgement, the petitioner could not obtain prior permission for getting the treatment from Batra Hospital, since he was carried to that hospital in a serious condition on account of the persistence of that disease on a particular day. The Hon'ble Delhi High Court has said that there is no legal bar for the respondents to have granted such a permission if it was required when the petitioner put up his claim for re-imbursement. In the instant case there is atleast a representation made by the applicant on 28.11.1990 to Director Health Services seeking permission before getting himself admitted in the AIIMS. He has said that he has been advised a bye-pass surgery of heart in view of 100% blockage of two arteries. The Director, Health Services did not call the Medical Board for referring him to A.I.I.M.S. When a

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person is suffering from coronary disease, the practice is to call atleast two experts i.e. (i) Cardiologist and (ii) Surgeon in the Medical Board which is normally presided over by the Director, Health Services. Director under an obligation to call a Medical Board in matters of heart ailments particularly when the arteries are blocked, there is an urgency about it and that urgency has to be realised by the respondents. This, unfortunately, has not been done in this case. Even after the bills were submitted, the applicant has been asked to produce two following informations:-

(i) "Under what circumstances Shri Manglani took the treatment of N.D.M.C. Polyclinic;"

(ii) "Why Shri Manglani did not take the treatment from authorised medical authorities".

The applicant has sent reply to these objections clarifying the position. He has also referred, vide Annexure A.6, his financial hardship on account of this bye-pass surgery.

He had submitted the documents/ required by the respondents but it is admitted that the re-imbursement has not been made.

Following the proposition of law laid down in the judgement of the Hon'ble Delhi High Court in Civil Writ Petition No. 2612/93 and also in view of the above discussion, I allow the application and direct the respondents to re-imburse the actual cost incurred by the applicant on his bye-pass surgery. In the circumstances, there will be no order as to costs.

(B.K.SINGH)
Member (A)