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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1720/2000

New Delhi, this the ..31...day of October, 2001

HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Shri Ashok Kumar Singh
T.No. 2317
Welder Fabrication working in
510 Army Base Workshop,
Meerut Cantt R/o H.No.193,
Shivlok, Kanker Khera,
Meerut (U.P.)

... Applicant

(By Advocate : Shri V.P.S. Tyagi)

versus

1. Union of India (through Secretary)
Min. of Defence, New Delhi
2. Director Central Government
Health Scheme, Nirman Bhawan,
New Delhi
3. The Controller of Defence Accounts (Army)
Meerut Cantt (UP)
4. The Commandant,
510 Army Base Workshop,
Meerut Cantt (UP)
5. Superintendent & Medical Officer Incharge,
Lok Priya Nursing Home and Hospital,
Samrat Palace, Garh Road,
Meerut (UP)

... Respondents

(By Advocate : Shri K.R. Sachdeva & Shri Ashok
Aggarwal)

O R D E R

Applicant's son underwent surgical procedure in the Lok Priya Nursing Home & Hospital, Meerut and stayed on in the said Hospital for the aforesaid purpose from 6.8.1998 to 13.8.1998. After the surgical procedure had been performed and the hospitalisation was over, the applicant preferred a reimbursement claim for Rs.9,109/-, out of which only a sum of Rs.4,640/- was allowed to be reimbursed with the details thereof as follows:
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(i) Package deal	Rs. 3600.00
(ii) Package deal	Rs. 750.00
(iii) Traction Kit	Rs. 150.00
(iv) Pathological charges	Rs. 140.00

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Total : Rs. 4640.00

2. A sum of Rs.1050.00 towards room rent charges was disallowed to which no objection has been taken by the applicant. For effective recovery of the patient, namely, applicant's son, while he remained admitted in the same hospital, an expenditure of Rs.3419.60 was incurred on medicines duly prescribed by the doctor of the said hospital attending on the patient. The aforesaid amount has been disallowed by the respondents and aggrieved by the same the applicant has filed the present OA impugning the contents of Director, CGHS's letter placed at Annexure A-1 by which the clarification sought by the Controller of Defence Accounts (CDA) has been given in regard to the indoor treatment of applicant's son.

3. The learned counsel appearing on behalf of the applicant submits that the aforesaid clarification rendered by the Director, CGHS is not consistent with the Rules on the subject and, therefore, the respondent-authority should be directed to reimburse the aforesaid amount of Rs.3419.60. The learned counsel appearing on behalf of the respondents has, on the other hand, vehemently argued that the claim of the applicant has been considered wholly in accordance with the rules on the subject laid down in Office Memorandum (OM) dated 5.6.1997 (Annexure A-5) and, therefore, the OA has no force and must be dismissed.

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4. The learned counsel appearing on behalf of the applicant admits that the package deal envisaged under the aforesaid OM of 5.6.1997 does not include the cost of medicines prescribed for effective recovery of the patient. On the other hand, according to him, the same includes only those expenses on drugs as are used during the procedure and on disposable surgical sundries and physiotherapy charges. Having made an admission to this effect, and the vires of the OM dated 5.6.1997 ~~not~~ ² having been challenged, the only option left to me is to see if the clarification rendered by the letter at Annexure A-1 is in accordance with the provisions made in the aforesaid OM of 5.6.1997.

5. The learned counsel appearing on behalf of the respondents relies on the following provisions made in paragraph 15 of the aforesaid OM dated 5.6.1997 to argue that the expenditure to be reimbursed in the instant case will have to be restricted to the package deal rates and the expenditure incurred in excess of the package deal rates will have to be borne by the applicant:

"15. The expenditure to be reimbursed by the parent department/office CGHS directorate, as the case may be, would be restricted to the package deal rates/rates approved by the Government from time to time. The expenditure in excess of the approved rates/package deal would have to be borne by the beneficiary himself/herself."

6. He has further relied on the provision made in paragraph 9 of the same OM which is as follows:-

"9. If one or more minor treatment procedures form part of a major treatment procedure, the package charges would be

made against the major procedures and only half of actual charges quoted for the minor procedures would be added to the package charges of the first major procedure." (8)

7. The learned counsel has gone on to place on record a copy of the undertaking presumed to have been given by the applicant while seeking permission for the surgical procedure in question. The same clearly stipulates that expenditure in excess of the package deal rate will have to be borne by the applicant.

8. On the question whether as a welfare state, the State is obliged to reimburse the entire expenditure as in this case, irrespective of the provisions made in the aforesaid OM dated 5.6.1997, the learned counsel has placed reliance on what the Supreme Court has had to say in the case State of Punjab & Others v. Ram Lubhaya Bagga etc. etc. decided by that Court on 26.2.1998 and reported in AIR 1998 SC 1703. In that case also the respondents had not specifically challenged the new policy of 1995 framed by ~~the~~ the State of Punjab which had led to the exclusion of a designated hospital in which the respondent (a Government servant under the State of Punjab) could receive medical treatment. In the event, the said respondent had to be shifted to Delhi and the All India Institute of Medical Science (AIIMS) then being under ~~the~~ ^{the} spell of ^a prolonged strike, the respondent was admitted in Escorts. Justifying the exclusion of the designated hospital aforesaid, the Supreme Court had, in the said case, observed as under:

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"35. No right could be absolute in a Welfare State. A man is a social animal. He cannot live without the co-operation of large number of persons. Every article one uses is the contribution of many. Hence every individual right has to give way to the right of public at large. Not every fundamental right under Par III of the Constitution is not absolute and it is to be within permissible reasonable restriction. This principle equally applies when there is any constraint on the health budget on account of financial stringencies.

9. In the light of the submissions made by the learned counsel on either side and having particular regard to the provisions made in the aforesaid OM dated 5.6.1997, I find that the aforesaid clarification impugned in the present OA follows the provisions made in the aforesaid OM dated 5.6.1997 and ~~is~~ ^{is} therefore, ~~been~~ ^{been} correctly given in all respects. Having regard to aforesaid-mentioned observations made by the Supreme Court, I also conclude that the State has the necessary authority to exclude certain payments while entertaining ~~the~~ financial claims preferred by Government servants in such cases in the interest of sound financial administration of the State. I have also kept in view the statement made by the learned counsel for the respondents at the bar that the respondent authority in the present OA has not made any exception to the aforesaid rule in any case so far, and the rules in question have been consistently and correctly followed all along.)

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10. In the aforesaid circumstances, I find no (26)
merit in the OA, which is dismissed. No costs.


(S.A.T. RIZVI)
MEMBER (A)

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