

CENTTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1879/2000

New Delhi this the 1st day of April, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri M.P.Singh, Member (A).

Harpran Singh Puri,
S/o Shri Diwan Singh Puri
Resident of B-2/96, Paschim
Vihar, New Delhi.

..Applicant

(By Advocate Sh. V.P.Trikha)

VERSUS

1. The Director General,
E.S.I.Corporation, Kotla
Road, New Delhi.
2. The Director (Medical),
ESI Hospital Complex
Basai Darapur, Outer Ring
Road, New Delhi.

..Respondents

(By Advocate Shri G.R.Nayyar)

O R D E R

(Smt. Lakshmi Swaminthan, Vice Chairman (J)

The applicant is aggrieved by the action taken by the respondents in not reimbursing him the entire medical claims for heart surgery which was done at Escorts Heart Institute and Research Centre (EHIRC).

2. The applicant who a retired pensioner of the Employees' State Insurance Corporation (ESIC)/ respondent No.1, has stated that he is a medical beneficiary under the ESI Scheme. According to him, he had claimed medical reimbursement of Rs.1,07,200/- from the respondents which he had spent on his by-pass surgery at EHIRC but the respondents have only sanctioned an amount of Rs.30,000/- by their order in March, 1994.

The applicant had represented against this order for full reimbursement of the claim which was not accepted by the respondents. Hence this OA.

3. The applicant states that he is a heart patient for more than 10 years. On 11.2.1993, Dr. K.A.Rama Chandran, Consultant and Head of the Department of Medicines of the ESI Hospital had referred him to the All India Institute of Medical Science (AIIMS)/ Batra Hospital and G.B.Pant Hospital for angiography. He states that angiography was got done at G.B.Pant Hospital on 26.3.1993. Shri V.P.Trikha, learned counsel for the applicant has very vehemently submitted that the applicant could not have taken a chance on his life as the doctors attending to him in the Hospital had orally advised him for immediate by-pass surgery but the senior consultant of that Hospital had asked him to come to the Hospital only in September, 1993. Therefore, he had taken a decision to go to EHIRC. He submits that after seeing the angiography reports of G.B.Pant Hospital the doctors in the EHIRC had admitted him immediately on 12.4.1993 and performed the heart surgery on 14.4.1993. He had incurred an expenditure of Rs.1,07,200/- for the surgery which he submits should be fully reimbursed to him by the respondents. He has relied on the judgement of the Tribunal in B.R.Madan Vs.Director General ESIC Corporation and Ors (CAT(PB)(SB)(OA 967/1996) decided on 1.12.1998. He has also relied on para 24 of the Employees State Insurance

Corporation (Staff and Conditions of Service) Regulations, 1959 (hereinafter referred to as the 1959 Regulations). Learned counsel has submitted that since ESIC does not have any separate regulations the rules applicable to Central Govt. servants shall apply to the applicant and he is, therefore, entitled to full reimbursement of the medical claim.

4. The respondents in their reply have taken a preliminary objection that the OA is hopelessly time barred and should be dismissed on this ground. They have submitted that the applicant underwent medical treatment in April, 1993 and had been sanctioned reimbursement of Rs.30,000/- by their letter dated 7.3.1994. They have further submitted that the averment of the applicant that he had represented against this order by letter dated 24.5.1993 (Annexure A-4) is not obviously possible. The respondents have also submitted that the legal notice on behalf of the applicant dated 5.6.1994 was duly replied by them by their letter dated Nil in June, 1994 (Ann.A.6) in which it has been stated, inter alia, that the payment released to the applicant is the maximum ceiling limit admissible under the existing instructions and no further relief can be granted to him. They have therefore, submitted that the issue was closed in June, 1994 and even the applicant did not make any further representation for more than 5 years until 1999 (Annexure A-8). To this, the respondents have stated

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that the admissible amount has already been reimbursed and no further amount was due to the applicant by letter dated 27.7.2000 which cannot, therefore, be used as extension of limitation after the issue was closed in June, 1994. On the merits of the case, Shri G.R.Nayyar, learned counsel has submitted that with regard to the case of B.R.Madan (supra), the High Court has stayed the Tribunal's order but before the matter could be heard on merit, the applicant had died and the legal successors were not brought on record. Learned counsel has submitted that the applicant is entitled to medical facilities as are available to the employees in ESI Hospitals and other recognised Hospitals. He has contended that the applicant could have got the necessary treatment either at G.B.Pant Hospital or Batra Hospital or AIIMS, which at that time were all recognised. He has also contended that the applicant is not a Central Govt. Health Scheme (CGHS) beneficiary and any comparison with the CGHS is most inappropriate. He has, therefore, submitted that the pensioners of the ESIC are not covered under the CGHS, like that of Central Govt. pensioners. He has submitted that if the applicant has gone to EHIRC on his own, the said amount cannot be reimbursed by the respondents as the applicant could have followed up his case in AIIMS or Batra Hospital which had also been given in the reference slip by the doctor of ESI Hospital. He has also submitted that full reimbursement of Rs.1,07,200/-

as claimed by the applicant is not even given by the Central Govt. to its pensioners because certain expenses are to be borne by the pensioners themselves and the applicant was reimbursed as per the provisions of the relevant Rules and instructions. He has further submitted that a comparison with the Central Govt. is totally misplaced and will not assist the applicant. Shri G.R.Nayyar, learned counsel has, therefore, submitted that as the maximum limit admissible under the existing ESIC Rules and Regulations have been given to the applicant, the OA may be dismissed both on the ground of limitation as well as merit.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. It is seen from the facts mentioned above that admittedly the doctor at ESIC Hospital in his opinion dated 11.2.1993 had referred the applicant for angiography to the AIIMS or Batra Hospital or GB Pant Hospital. The applicant had accordingly gone to G.B.Pant Hospital on 26.3.1993. As the senior consultant of that Hospital had asked him to come back to the Hospital only in September, 1993 for surgery, he and his family had taken a decision to go to EHIRC. If the applicant was not satisfied with the opinion of the doctor at GB Pant Hospital, he could have very well gone to AIIMS or Batra Hospital for a second medical

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opinion to satisfy himself but this was not what he had done. He had on his own gone to EHIRC and paid an amount of Rs.1,07,200 for his heart Surgery. In the circumstances of the case, we do not find any merit in the application and he is not entitled for full reimbursement of the amount he had incurred for Surgery in EHIRC de hors the rules and regulations applicable to ESIC beneficiaries. The reliance placed by Shri V.P.Trikha, learned counsel on Para 24 of the 1959 Regulations will not be applicable to the facts in this case as the respondents have their own Rules for reimbursement of the medical expenses. He has already been given Rs.30,000/- for the same treatment as far back as March, 1994. The learned counsel for the applicant had pleaded emotionally that as the applicant was not satisfied with the medical opinion given by the doctor at G.B.Pant Hospital to come back in September, 1993 as he did not want to die and so on, he went to EHIRC cannot assist him because nothing prevented him from availing of the facilities in the other two Hospitals i.e. Batra or AIIMS which were admittedly recognised by the respondents for his medical treatment. If the applicant chose to ignore the relevant Rules and instructions issued by the respondents, he cannot derive any benefit from his own lapses. In the circumstances para 24 of the 1959 Regulations relating to service conditions cannot assist the applicant in the present case. He will not be entitled to full reimbursement of medical expenses

contrary to the Scheme applicable to retired ESIC employees. We also see merit in the submissions made by Shri G.R.Nayyar, learned counsel that even in the case of CGHS beneficiary, the medical reimbursement is applicable as per entitlement under the relevant rules and instructions which will be subject to admissible deductions. In the facts and circumstances of the case, the judgement of the single Bench of the Tribunal in B.R.Madan's case (supra) will not assist the applicant.

7. Apart from the merit of the case we also note that the applicant had already been informed as back as March, 1994 that he is only entitled for payment of Rs.30,000 towards medical reimbursement as claimed by him for by pass Surgery at EHIRC. In the circumstances, the contention of the respondents that he could not have represented against this letter by his letter dated "24.5.1993" is correct. The legal notice issued by the applicant had also been rejected by them in June, 1994. Thereafter the applicant had made a representation after 5 years on 21.9.1999 which has been replied by them on 25.7.2000 that no further amount was admissable. In the facts and circumstances of the case, the representation given by the applicant dated 21.9.1999 cannot be considered as a statutory remedy submitted in time which has the effect of extending the period of limitation, when the applicant

very well knew in March, 1994 itself that he will not be sanctioned any medical reimbursement beyond Rs.30,000/-. In the facts and circumstances of the case, the application is also liable to be dismissed on the ground of limitation.

8. In the result, for the reasons given above, the application fails both on merit as well as on limitation. OA is accordingly dismissed. No order as to costs.

M.P.Singh
(M.P.Singh)
Member (A)

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Vice Chairman (J)

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