

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 1973/2000

New Delhi this the 10th day of August, 2001.

Hon'ble Shri Shanker Raju, Member (J)

1. Shri S.C. Goel,
Sr. A.O. (Retd.) from
J.C.D.A. (Fund) Meerut
R/o D-299, Shastri Nagar
Meerut.

....Applicants

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

Versus

1. Union of India through Secretary,
Ministry of Health & Family Welfare,
New Delhi
2. The Director,
Central Govt. Health Scheme,
Nirman Bhawan,
New Delhi.
3. The Additional Director,
Kendriya Sarkar Swasthya Yojna,
102, Soti Ganj,
Meerut (U.P.).
4. The Joint Controller of,
Defence Accounts (Funds),
Meerut (U.P.).

....Respondents

(By Advocate Shri K.R. Sachdeva)

O R D E R

The applicant a retired Govt. servant has sought quashing of an order passed on 23.07.1999 whereby his claim for medical reimbursement amounting to sum of Rs.8896.40 has been rejected by the respondents. The applicant has also sought interest on the aforesaid stated amount @ 18% from 1990 till its actual payment.

2. Briefly stated, the applicant superannuated on 31.07.1989 and met with an accident on 06.07.1990. The applicant remained hospitalised as

(2)

indoor patient in St. Lukes Hospital Meerut wherein he incurred an expenditure of Rs.8896.40 including the room rent charges. The applicant submitted his claim for medical reimbursement to Respondent No.3 attaching all the relevant documents. By a letter dated 10.10.1995, it has been communicated to the applicant by Respondent No.2 that the applicant's case is not fit as he was not holding a valid CGHS card at the time of treatment as the card was valid upto Dec.1989. It is stated in the letter that in the event that if the applicant produces a photocopy of the CGHS Card No.15311 and the same is forwarded to the Directorate failing which his case would be treated closed. The applicant was considered by the respondents including the fact that on 16.07.1990 he had moved an application for renewal of his CGHS card and the same was validated from January 1990 to December, 1990. The learned counsel of the applicant stated that the case of the applicant has been rejected arbitrarily as Respondent No.3 had already admitted the subscription of the applicant and as a consequence his CGHS card is validated including the period of treatment w.e.f. 06.07.1990 to 16.07.1990. Moreover, the applicant had obtained treatment during the period from February, 1990 to May 1990. The respondents are stopped from raising the plea of invalidation of the card during the period of his treatment and he being a beneficiary of CGHS scheme is entitled for reimbursement of the medical claim. The applicant resorted to Section 70 of the Contract Acts stated that once the applicant has done his part the respondents should be compelled to

h

(3)

perform their part and they have been estopped from raising the issue of invalidation after they have received the amount on his application and validated the card w.e.f. January, 1990 to December, 1990. The applicant in support of his contention has placed relevance on a decision of the Apex Court in New Marine Coal Co.(Bengal) Private Ltd. Versus Union of India, AIR 1964 Supreme Court 152. It is also stated that in view of the Govt. of India instructions contained in letter dated 18.05.1982 as well as the Notification and OM issued on 07.04.1999, in case of emergency in respect of pensioners the treatment can be obtained even in un-recognised hospitals and for granting approval, the powers have been delegated to the Head of the concerned CGHS covered city. In this background, it is stated that his claim has been rejected arbitrarily without any reasons.

3. On the other hand, strongly rebutting the contentions of the applicant, the learned counsel for the respondents took a few preliminary objections including the limitation and jurisdiction of this Tribunal. It is stated that the matter pertains to Meerut where the applicant was residing as such without moving an application for transfer Under Section 25 of the AT Act, 1985, Principal Bench has no jurisdiction to entertain his grievance. It is also stated that the cause of action had arisen to the applicant in the year 1990 and lastly, in the year 1995 and applicant has filed this OA only in the year 2000, the same is not maintainable in view of the provisions of the Section 21 of the AT Act, 1985. It

(4)

is also stated that by a letter dated 23.07.1999 which has been impugned herein, the case of the applicant has not been considered afresh, but the decision arrived at in letter dated 18.10.1985 has been referred to only. On merits also, it is stated that what matters is whether the applicant was a beneficiary of the CGHS during the period he got his treatment from the private hospital i.e. from 06.07.1990 to 16.07.1990. It is also stated that the applicant after December, 1989 was not a beneficiary of the CGHS as his CGHS card was not renewed. It is also stated that subsequently his card was renewed on 16.07.1990 as he deposited the amount in cash and that would not validate the period during which he was not a beneficiary of the CGHS, when he took the treatment. The respondents have further contended that from January, 1990 to 15th July, 1990, he had taken treatment from the CGHS illegally by concealing those facts and would have been prescribed medicines by the Medical Officers on sympathetic and humanitarian grounds. It is lastly stated that medical claims of pensioners who had taken treatment in the private and un-recognised hospitals without permission of the Ministry concerned is not admissible under the Rules and the respondents have through their speaking order have rejected the claim of the applicant.

4. I have carefully considered the rival contentions of the parties and perused the material on record. In my considered view, the applicant is not legally entitled for medical reimbursement as claimed by him. The ratio cited by the applicant by resorting

h

(5)

to Section 70 of the Contract Act is not applicable in the facts and circumstances of the present case. The case before the Apex Court was regarding the supply of coal which according to respondents therein was in violation of the Contract wherein in those circumstances it has been held that if the fair part has been discharged by a party to the Contract the other party should be directed to perform his part and the Doctrine of Estoppel would be applicable. In the instant case, it is apparent from the record that from January, 1990 upto 15th July, 1990, the applicant had not validated his CGHS Card and had moved an application only on 16.07.1990 and deposited the requisite amount only then the card was validated w.e.f. January, 1990 to December, 1990. The subsequent renewal of the card and validation with a retrospective effect would not confer the applicant a right to be a beneficiary of CGHS at the time when he got his treatment from a private hospital w.e.f. 06.07.1990 to 16.07.1990. In my considered view, the applicant has not disclosed, at the time of getting his CGHS card renewed, the fact of his claiming reimbursement and this was a move of the applicant to claim the medical reimbursement which is amounting to Rs.8896.40 and as such, he moved an application for renewal and the same has been validated from a retrospective effect. The subsequent validation would not change the fact that during the period of treatment the applicant having failed to renew his CGHS card cannot be considered to be a beneficiary of the Scheme. There is no question of applicability of Doctrine of Estoppel in the present case as the

16-

applicant has got the CGHS card renewed only on 16.07.1990 without disclosing true facts to the concerned officer. The Doctrine of Estoppel would not be applicable as firstly, true facts have not been apprised to the officer who validated the card and, secondly, the applicant had been using CGHS card since January 1990 without getting it renewed unauthorizedly and illegally. The Doctrine cannot be resorted to in such like cases. As regards the issue whether the applicant has been entitled for medical reimbursement as he has been treated in a Private Unrecognised Hospital is concerned and resort of the applicant to Govt. of India instructions as well as OM dated 07.04.1999 wherein it is clarified that in emergency the treatment can be taken by pensioners even from un-recognised private hospitals and for approval the powers have been delegated to Head of the concerned CGHS covered city is concerned, the same would be applicable only at particular time when the treatment was taken by a pensioner as a CGHS beneficiary. In the absence of renewal during the period of treatment, the applicant cannot be treated as a CGHS beneficiary. He would also not be covered by the instructions of the Govt.

5. In the result and having regard to the discussion made, as the applicant has failed to make out a legal claim for medical reimbursement, the OA lacks merit and is dismissed but without any order as to costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)