

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.477/2000

New Delhi, this 20th day of April, 2001

Hon'ble Shri M.P. Singh, Member(A)

R.K. Madan

C-7, Greater Kailash Encl.II

New Delhi-48

.. Applicant

(By Shri G.D.Bhandari, Advocate)

versus

Union of India, through

1. Secretary

Ministry of Health

Nirman Bhavan, New Delhi

2. Director General

Central Govt. Health Scheme

Nirman Bhavan, New Delhi

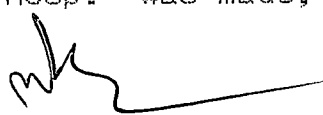
.. Respondents

(By Shri Madhav Panickar, Advocate)

ORDER

By filing this OA, the applicant seeks to challenge the letter dated 14.9.99 by which his claim for full reimbursement of the amount incurred by him towards his treatment for Heart Surgery at Escorts Heart Institute and Research Centre (EHIRC, for short) has been rejected.

2. Briefly stated, the applicant retired from service on 28.2.85 on superannuation as Senior Technical Assistant in the Ministry of Agriculture. In terms of medical rules, the applicant is covered under the Central Government Health Scheme (CGHS, for short) for medical facilities. Earlier he was issued Medical Card which expired on 31.12.85. On expiry of the same, another Medical Card was issued by the respondents but on this card endorsement "For Nursing Home, only in Central Govt. Hosp." was made, although in the earlier




card endorsement was made to the effect that the applicant was "entitled for Nursing Home". Unfortunately the applicant suffered serious Heart-stroke. He attended CGHS dispensary, Kalkaji, New Delhi and after conducting necessary preliminary investigations, he was referred to EHIRC for necessary treatment and medical facilities. According to the applicant, he attended EHIRC where necessary requisite tests and investigations were conducted and he was admitted for angiography. During his stay in the hospital it was found that there was blockage in all the three arteries to the extent of 85% to 90%. Thus by-pass surgery was done. EHICR sent a bill for Rs.1,80,350 in connection with heart surgery of the applicant showing full details. CGHS authorities have paid an amount of Rs.99,000 to EHIRC towards operation and other charges. Rs.10,000 is the amount of subsidy. Thus the residual amount of Rs.71,350 has been paid by the applicant in cash to EHIRC.

3. The applicant submitted application claiming refund of medical expenses incurred by him. He also sent a representation on 15.7.98 mentioning therein that he is entitled to nursing home facilities as per Rules. In the last medical identity card it was mentioned "For nursing Home only in Central Government Hospitals", but that cannot be termed as making the applicant disentitled to nursing home facilities. The respondents have not reimbursed the full amount. However an additional amount of Rs.3850/- only has been paid to him. On receipt of the aforesaid amount of Rs.3850/-, the applicant served a legal notice on 15.7.99 on the respondents. Respondents however did not accede to his

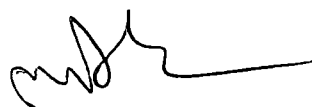


request and in response to the aforesaid legal notice have issued letter dated 14.9.99 whereby claim of the applicant has been rejected on the ground that the applicant is entitled for semi-private ward in private recognised hospital under CGHS as per rules. The contention of the applicant is that in terms of Central Service (Medical Attendance) Rules, after being recognised as a Government Hospital as per OM dated 18.9.96, EHIRC is deemed as a Government Hospital for all purposes. Since respondents have rejected his claim by letter dated 14.9.99, he has filed this OA seeking reliefs praying for direction to quash the letter dated 14.9.99 and for direction to the respondents to reimburse the full amount in terms of the bill submitted by the applicant. He is also seeking further direction to the respondents to maintain his entitlement to "Nursing Home" as indicated in his original medical identity card (Annexure A-4).

4. Respondents have stated that the medical reimbursement claim which the applicant has submitted pertains to the treatment of a CGHS beneficiary. Applicant has given reference to CS(MA) Rules which are not applicable to CGHS beneficiaries except in case of serving employees of Central Government who take treatment in a non-CGHS area. Since the applicant is a pensioner beneficiary of CGHS, he had taken treatment in CGHS covered area which is covered by CGHS Rules. The CMO I/C, Kalkaji gave permission for a specific procedure i.e. CABG as per CGHS approved rates. The applicant was permitted to undergo CABG operation only in EHIRC. The approved amount for this procedure as per the entitlement of the applicant was Rs.99,000 as per OM



dated 18.9.96. According to the respondents, the treatment was taken in a private recognised hospital which has a 3 tier system namely private ward, semi-private ward and general ward. The entitlement for availing treatment in these wards depend upon the CGHS Contribution. In the case of the applicant the monthly contribution was only Rs.20 which makes him entitled for semi-private ward. EHIRC is a recognised private hospital under CGHS, Delhi which is not a Government hospital. The contention of the applicant that this hospital is deemed to be a Government Hospital for all purpose is not correct as this has a reference to CS(MA) Rules. It is already submitted that pensioner beneficiaries of CGHS are not covered by CS(MA) Rules. Permission for treatment of CABG was granted as per approved rates. Room rent is included in the package deal as well as the cost of the membrane, which is a disposable surgical sundry. Therefore, the admissible amount for payment for these items has to be restricted to the package deal rate for CABG which was only Rs.99,000 in case of the applicant as per his entitlement. This amount was paid directly to the Hospital by CGHS. Reimbursement for other investigations as mentioned in the hospital bill was made to the applicant as per CGHS approved rates. The total admissible amount for these tests was only Rs.3850. As per OM dated 21.6.96 (Annexure R-1), expenditure in excess of approved rates/package deal would have to be borne by the beneficiary. Since the claim for reimbursement of the applicant was for the excess amount, it could not be paid. Reasons for non-payment of excess amount have been made clear to the



applicant vide letter dated 14.9.96 (Annexure A-2 to the OA). In view of the submissions made, the OA is devoid of merit and be rejected.

5. Respondents have also submitted that as per the existing procedure EHIRC was directly paid the approved amount of Rs.99,000 for CABG as per the entitlement of the applicant. He submitted a medical reimbursement claim along with hospital bill for Rs.1,70,350, inter alia showing charges for room rent, holter test, PET test, Doppler Test, Surgery charge, cost of Membrane and ultra sound. Reimbursement for other investigations was made to the applicant. Thus a total amount of Rs.3850 admissible as per CGHS rates vide OM dated 18.9.96 was paid to the applicant. As per OM dated 21.6.96 issued by the Government of India (M/Health & Family Welfare, CGHS(P) Section), expenditure in excess of approved rates/package deal would have to be borne by the beneficiary. The reason for non payment was made clear to the applicant vide impugned letter dated 14.9.99. In view of this position, the OA is devoid of any merit and deserves to be dismissed.

6. Heard the learned counsel for the parties and perused the records.

7. The learned counsel for the applicant has cited a number of judgements in support of his claim, e.g. N.P. Singh Vs. UOI 1999 Lab.IC 1861 wherein the Delhi High Court held that the reimbursement cannot be denied and the petitioner is entitled to the full reimbursement; in State of Punjab Vs. M.S.Chawla AIR 1997 SC 1225, the apex court held that reimbursement of the rent paid for



the room in the hospital for the period of stay has to be reimbursed and the Govt. policy to pay the room rent at the rates charged by AIIMS is applicable. On the other hand, the learned counsel for the respondents submitted that these judgements are not applicable to the present case. He has submitted that in the case of N.P.Singh (supra) the High Court had directed the respondents to make reimbursement only upto the extent of admissibility and not full amount. Again in the case of M.S.Chawla (supra), the apex court had delivered the judgement in favour of the petitioner as he was referred by a competent authority under the State Government of Punjab to avail treatment in AIIMS. However in the instant case, the required treatment was available in the city of residence of the applicant and the admissible amount as per package rate of Rs.99,000 has been paid to the Hospital by the respondents.

8. The counsel for the applicant further contended that entitlement to private ward cannot be challenged on the simple basis of the amount of his contribution to the CGHS but is related with the scale of pay of a government employee. Applicant's pension at the relevant point of time was Rs.3869/- and therefore it cannot be related with the subscription of the applicant towards the CGHS fund. On the other hand, the learned counsel for the respondents submitted that the amount of pension of Rs.3869/- is with reference to revised pension after the recommendations of the 5th Pay Commission and it is therefore not relevant. He also drew my attention to the letter dated 18.9.96 (Annexure A-12 to the OA). As per para 4 of the aforesaid letter, the entitlement for indoor treatment would be as under:



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|-------------------------------------|----------------------|
| (i) Pay upto Rs.2500 | .. General Ward |
| (ii) Pay Rs.2501/- and upto Rs.3500 | .. Semi-private ward |
| (iii) Pay Rs.3501 and upto Rs.6000 | .. Private Ward II |
| (iv) Pay Rs.6001 and above | .. Private Ward I |

As per the last pay drawn by the applicant, he was not entitled for private ward. Moreover, the rate of CGHS contribution fixed in the case of the applicant was Rs.20/- which makes him entitled for semi-private ward facility only.

9. The next contention of the applicant is that the endorsement made in CGHS card to the effect "For Nursing home only in Central Govt. Hosp." was malafide and arbitrary. However, the counsel has not come with any proof for such malafide or arbitrary action. Also he cannot take objection for this endorsement at this stage, when the same was done as per rules by the respondents at the time of issue of the card.

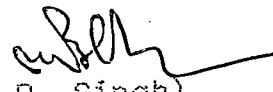
10. The learned counsel for the applicant also relied upon the decision of this Tribunal dated 1.12.98 in OA 967/96 in support of his case. After going through the judgement, I am of the view that this judgement is distinguishable from the present case as the applicant in that case was not a CGHS beneficiary and therefore it would not render any assistance to the applicant. On the other hand, the learned counsel for the respondents has produced a copy of judgement dated 13.8.98 in OA No.299/98. In this case also the applicant was admitted for treatment in EHIRC. Following the ratio of the judgement of the apex court in the case of State of



Puniab & Ors. Vs. Ram Lubhaya Bagga & Ors. 1988(4)
SCC 1777. this was dismissed on merit. In R.L.Bagga's
 case, the apex court has held as under:

"No state or any country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible. the same holds good for providing medical facilities to its citizens including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finances permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India"

11. In view of the above judgement and also keeping in view the fact that CS(MA) Rules are not applicable to the applicant, I have no hesitation to hold that the case of the applicant is covered by the judgement in OA No.299/98 (supra) in all fours. In view of this reason and also for the detailed discussions aforementioned, I find no merit in the present OA and the same is accordingly dismissed. No costs.


 (M.P. Singh)
 Member(A)

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