

**Central Administrative Tribunal
Madras Bench**

OA/310/01741/2014

Dated Monday the 25th of January Two Thousand Sixteen

P R E S E N T

Hon'ble Mr.R.Ramanujam, Member(A)

P. Varghees
S/o. M.Ponipase,
362, Park Road,
East Ramanpudur, Kottar,
Nagercoil 629 002. .. Applicant

By Advocate **M/s.P.Rajendran**

Vs.

1. The Union of India, rep by the Postmaster General,
Southern Region,
Madurai 625 002.
2. The Senior Postmaster,
Nagercoil H.O.,
Nagercoil 629 001. .. Respondents

By Advocate **Mr. M.Kishore Kumar**

ORDER
(Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

The applicant was working as a Sorting Postman at the Nagercoil Head Post Office. He was admitted in Amrita Institute of Medical Sciences, Cochin on 10.7.2012 with Double Vessel Coronary Artery Disease. He underwent cardiac surgery (Coronary Artery Bypass Grafting) on 11.7.2012 and was discharged from the hospital on 29.7.2012. The applicant claims that he is a subscriber to the CGHS and is, therefore, entitled to reimbursement of the medical expenses. He submitted a medical claim for Rs.3,99,213/- along with the original bills to the Senior Postmaster, Nagercoil which was forwarded to the Postmaster General, Southern Region, Madurai for approval. However, his claim was rejected by the latter by the impugned order dated 18.11.2013 on the ground that as per the report furnished by the Doctor who treated the applicant, the first consultation was on 29.6.2012 and the applicant underwent the surgery only on 11.7.2012 which showed that the applicant had taken regular treatment in Amrita Hospital, Cochin and, therefore, it was not a real case of emergency. The applicant submits that the impugned order is unjust and contrary to law and prays for the direction to the respondents to reimburse his medical claim with interest.

2. The respondents have filed a reply stating that the applicant had taken treatment in a hospital outside his Headquarters without getting permission. It is not a case of emergency as he could have requested for permission after the first

consultation on 29.6.2012. In his appeal dated 5.1.2014 submitted to Chief Postmaster General, Tamilnadu Circle, Chennai, the applicant had confessed that he was under treatment at Amrita Hospital, Kochi where he underwent the cardiac surgery on 11.7.2012. A perusal of the records revealed that the official was undergoing regular and continuous check-ups there and his choice of open heart surgery in the said hospital was for his own convenience. Reimbursement of the medical bill is possible only when the surgery is done in Government/approved hospital located within the Headquarters/region where the applicant is posted. Government/approved multi specialities are available in the Regional Headquarters at Madurai itself. There are also approved hospitals within the region in which the applicant could have taken treatment and undergone surgery. The applicant did not seek prior permission from his Controlling Authority to take treatment at a hospital outside his Headquarters/State which is required under the CS(MA) Rules.

3. Heard the learned counsel for the applicants and the respondents and perused the material available on record.

4. Learned counsel for the respondents drew attention to the following provision in CS(MA) Rules and the same is reproduced below:-

"In emergent cases involving accidents, serious nature of diseases etc..., the person/persons on the spot may use their discretion for taking the patient for treatment in a private hospital in case no Government or recognised hospital is available nearer than the private hospital. The Controlling Authority/Department will decide on the merits of the case whether it was a case of real emergency

necessitating admission in a private institution."

It is contended that CGHS is not available in the region where the applicant is working except in Chennai and, therefore, his claim that he is entitled to CGHS facilities is not correct. In view of this, the applicant ought to have approached the competent authority for treatment in a hospital outside the region. His decision to take treatment and undergo surgery in Amrita Hospital, Cochin without permission from the competent authority is not in accordance with the relevant rules and, therefore, he is not entitled to the medical claim.

5. I have carefully considered the submissions by the rival parties in the light of the facts of the case and the relevant rules. It is not in dispute that the applicant underwent Coronary Bypass Surgery for which he had to incur the necessary expenditure. The respondents themselves have indicated in their reply that Government approved multi specialities are available in the Regional Headquarter at Madurai in which the applicant could have taken treatment and undergone surgery. It is not as if the treatment and the Open Heart Bypass surgery would have been free of cost in these hospitals and the applicant by undergoing the treatment in a hospital outside the Headquarter has incurred avoidable expenditure. Surely, any Government approved hospital in Madurai would also have charged for the various services at the approved rates. The respondents would have had to reimburse any claim arising out of such treatment/surgery and, therefore, the expenditure on this account from the public exchequer was inevitable and inescapable. In this view of the matter, a complete rejection of the medical claim

of the applicant resulting in zero liability to the Government is an unfair outcome in favour of the latter. It is a penalty on the applicant which is highly disproportionate to the lapse on his part in not seeking prior permission.

6. That the applicant failed to obtain prior permission for undergoing the treatment and the Bypass surgery in Amrita Hospital, Cochin is not in dispute. The issue, is whether the applicant forfeits his claim only for the reason that he had not obtained prior permission from the competent authority to avail of the treatment elsewhere.

7. The choice of hospital and place is dictated by the personal circumstances of the patient and he could not be faulted for choosing a place where he could expect maximum convenience in terms of logistics and attendance by close relatives as he would need such support in addition to the services available at the hospital. It is for this reason that a provision exists for seeking prior permission in such cases so that the request for treatment outside could be considered sympathetically and in accordance with the guidelines, if any, on the subject. While granting such permission, the competent authority would, satisfy itself that the case is genuine and in normal circumstances, attempt to secure the financial interests of the Government by imposing a condition that the reimbursement of medical expenses shall be restricted to the rates chargeable by approved hospitals or actuals whichever is less.

8. The purpose of requiring a Government servant to obtain prior permission for such treatment is to enable the authorities to satisfy themselves about the

genuineness of the ailment, the line of treatment proposed and whether cheaper options are available and the public exchequer could be saved of avoidable and possibly excessive cost of treatment in unapproved private hospitals. It is a legitimate safeguard against fictitious, exaggerated and fraudulent claims. It enables the authorities to examine the request prior to the treatment and take a decision in favour or against. In case of favourable consideration, permission may be granted with or without conditions. The requirement of prior permission, however, is not intended to provide an escape route to the employer to avoid its liability or to secure an undue saving for the Government out of the misfortune of an employee. It would, therefore, be unfair to invoke this condition if the competent authority has no reason to suspect the genuineness of the claim otherwise.

9. If the bonafides of the treatment cannot be doubted, it would be perfectly legitimate for the competent authority and in accordance with the spirit of the rules to examine whether prior permission would have been granted if it had been sought in the facts and circumstances of the case. For if permission prior or post cannot be granted only for the reason that the hospital is not an approved one, there would be no provision in the rules/instructions for seeking permission at all. The object of the rule is not to bring an ailing Government servant under an office discipline but to ensure that the Government is not put to any additional and avoidable financial burden on account of possible over-charging by a private unapproved hospital. If there is reason to believe that permission would have been

granted with or without conditions but for the failure on the part of the employee to formally apply for the same, then the total rejection of the entire claim for that reason alone cannot but be termed excessive.

10. Since in any case, the respondents would have had to incur expenditure in terms of reimbursement of medical claims if the treatment had been taken in a Government approved hospital, I am of the view that the ends of justice would be met if the respondents are directed to examine the reimbursement claim of the applicant carefully, satisfy themselves of his bonafides and restrict the claim to the amounts that would have been charged by an approved hospital in the Madurai region, had he undergone the treatment/surgery therein. The impugned order dated 18.11.2013 (Annexure A3) is, therefore, quashed and set aside. The respondents are directed to reconsider the claim in terms of the aforesaid observations and at rates allowed to be charged in approved hospitals and pass a reasoned and speaking order within a period of one month from the date of receipt of a copy of this order, after granting a personal hearing to the applicant.

11. The OA is disposed of in the above terms. No order as to costs.