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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2313/2004

New Delhi this the 23rd day of February, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

Ex-SI Rajan Lal Sharma

Applicant

(By Advocate Shri Yogesh Sharma)

VERSUS

NCT of Delhi through the Chief Secretary
New Sectt. New Delhi and Ors.

Respondents

(By Advocate Shri N.S.Dalal)

1. To be referred to the Reporters or not? *yes*

2. To be circulated to other Benches of the Tribunal or not? *No*

BB
(Mrs. Meera Chhibber)
Member (J)

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Hon'ble Mrs. Meera Chhibber, Member (J)

Ex-SI Rajan Lal Sharma,
R/o H. No. I/131, Gali No. 12, Laxmi Nagar,
Delhi-92.

.... **Applicant.**

(By Advocate Shri Yogesh Sharma)

Versus

1. NCT of Delhi through the Chief Secretary,
New Sectt. New Delhi.
2. The Commissioner of Police,
Delhi Police, Delhi Police Head Quarter,
I.P. Estate, New Delhi.
3. The Additional Director,
Central Govt. Health Scheme,
Nirman Bhawan, New Delhi.

.... **Respondents.**

(By Advocate Shri N.S. Dalal)

O R D E R (ORAL)

By this O.A., applicant has sought quashing of the order dated 19.7.2004 by which his claim for reimbursement of balance amount of Rs.20,530/- was rejected by a non-speaking order. He has further sought a direction to the respondents to reimburse the medical claim of Rs.20,530/- with interest.

2. The brief facts of the case are that applicant retired from Delhi Police, on 31.8.1996 as Sub-Inspector. He is a CGHS beneficiary and was admitted to Apollo Hospital, New Delhi on 23.1.2004 for his treatment of heart disease i.e. "CAD Post CABG and PTCA + stenting on native ostial LAD and OMI" with the prior permission of the Joint Director, CGHS, Nirman Bhawan, New Delhi. He was discharged on 25.1.2004. The total bill prepared by Apollo Hospital was for



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Rs.2,87,641/-, out of which CGHS paid Rs.2,67,111/- only. The applicant was made to pay the balance amount of Rs.20,530/- Otherwise, he was not allowed to be discharged from the Hospital on 25.1.2004.

3. After recovery, he submitted an application for reimbursement of balance amount of Rs.20530/- on 19.2.2004 but the same was rejected on a printed form dated 19.7.2004 (page 8). It is in these circumstances that applicant has filed the present O.A. He has relied on the judgment given by Delhi High Court in the case of Milap Singh Vs. Union of India and Anr., reported in 2004 (V) AD (Delhi) 529, V.K. Gupta Vs. Union of India and Ors. 2002 (97) DLT 337, M.G. Mahendru Vs. Union of India, 2001 DLT 59 and also the judgment given in the case of Shamsher Singh Vs. Union of India and Ors. decided by Principal Bench on 27.3.2003.

4. Respondents have opposed this O.A. by submitting that reimbursement under CGHS rules is being done as per the approved rates fixed by the Ministry of Health and Family Welfare and not as per the actual expenses. The principle/policy has been upheld by the Hon'ble Supreme Court in the case of State of Punjab and Ors. Vs. Ram Lubhaya Bagga, reported in 1998 (Vol. 4) SCC 117. It is submitted by the counsel for respondents that the policy has not been challenged by the applicant and since they have reimbursed him as per the policy laid down by the Government, this case calls for no interference. They have submitted that the judgments given by the Hon'ble High Court of Delhi are not applicable in the present case. Therefore, the O.A. may be dismissed.

5. I have heard both the counsel and perused the pleadings as well.

6. There is no doubt about it that in the case of Ram Lubhaya Bagga (supra), Hon'ble Supreme Court had held that no State or 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 as well. Provision of facilities





cannot be unlimited. It is further seen that in the same judgment, Hon'ble Supreme Court had held that if no scale or rate is fixed, then the private clinics or hospitals would increase their rates to exorbitant scales and the State would be bound to reimburse the same. It was in these circumstances that the Hon'ble Supreme Court observed that the principle of fixation of rate and scale under the new policy is justified.

7. In the present case, I find that respondents have stated in para 4.7 as follows:

"That para 4.7 is wrong and denied. In fact, the averments mentioned in the paragraph under reply is not based on facts. The Apollo Hospital sent a bill to CGHS amounting to Rs.2,67,111/- in respect of Shri Ranjan Lal Sharma for the period of treatment from 23.1.04 to 25.1.04 i.e. for 3 days only. Two sents were used by the hospital for Rs.80,080/- and Rs.1,27,600/-, respectively. The hospital claimed Rs.60,000/- for Pronova stent and Rs.1,27,600/- for Cypher stent from CGHS as per CGHS approved rates. The difference of Rs.20,080/- for Pronova stent and Rs.450/- were charged from the beneficiary by the hospital (Total Rs.20,530/-), which the petitioner later claimed from CGHS. Pronova stent is not approved for reimbursement under CGHS and the ceiling rate is Rs.60,000/- for coronary stent. The claimant should have taken up the matter with Apollo Hospital. The hospital was reimbursed as per the CGHS approved rates. As per rule any amount over and above the package rate is not reimbursable. Thus, it is clear that what was so permissible and what was so legal and justified the same has already been reimbursed and done and the petitioner cannot take any exemption to the same by way of the present O.A. as he has so done".

8. Two stents were used by the Hospital for Rs.60,000/- and Rs. 1,27,600/- respectively. The hospital charged Rs.60,000/- for pronova stent and Rs.1,27,600/- for coronary stent from CGHS as per CGHS approved rates. The difference of Rs.20,080/- for pronova stent and Rs.450/- were charged from the beneficiary by the hospital. They have further stated that pronova stent is not approved for reimbursement under CGHS and the ceiling rate is Rs.60,000/- for coronary stent.

9. A perusal of above paragraphs shows a contradictory stand has been taken by the respondents themselves. On one hand, they are saying that the pronova



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stent is not approved under CGHS and yet they are saying the ceiling rate is Rs.60000/- for coronary stent which has been paid by the CGHS as per the bill put up by Apollo Hospital for pronova stent for Rs.60000/-. In fact, since I am not from the medical side, I do not know the difference between the pronova stent and the coronary stent, also as to why the pronova stent was not approved by the CGHS and why pronova stent was still used by the Apollo Hospital, when it was not approved by the CGHS especially when they had already entered into an agreement with the CGHS for providing the medical facilities on the rates approved by CGHS.

10. It goes without saying that when a patient is referred to the Hospital for heart disease or for placing the stents, the patient hardly knows which stent is required to be put on him and what would be the difference between the pronova or coronary stent. There is nothing on record to clarify whether pronova stent was used by the Apollo Hospital because that was found to be necessary in the given case or it was used as per the request made by the applicant himself because if pronova stent was not approved as stated by the respondents themselves, and yet Apollo Hospital had used it, it could either be because the coronary stent was not available or the doctors were of the view that in the given circumstances pronova stent would be more effective or for some other reasons. In case pronova stent was used by the Apollo Hospital on their own without informing the applicant in writing that he would have to bear the expenses, applicant cannot be made to bear the expenses for this stent because it is not disputed by the respondents that he was referred to the Apollo Hospital with the prior permission of Joint Director, CGHS himself. It would, however, be a different story if pronova stent was used as per the request of patient himself. In that case, applicant would have to bear the expense. Therefore, somebody needs to apply mind to these facts, which has not been done by the respondents. In fact, further probe would be necessary in



these type of cases and some directions need to be issued so that these kind of cases do not occur at least in future.

11. It has to be kept in mind that CGHS has recognized certain hospitals for treatment as either they are not in a position to give that specialized treatment or in order to ease out the tremendous work load of Govt. hospitals or to provide better facility of advanced technology to the Govt. employees. In the process, CGHS has entered into an agreement with the said recognized hospitals that they would charge only the rates which have been approved by the CGHS for specific treatment. In these circumstances, if the said approved or recognized hospitals are charging over and above the approved rates, than what has been fixed by the CGHS, it is for the CGHS to take up the matter with those hospitals and to find out why they are charging more than the approved rates. It is not as if the respondents are remedy less. In case they find that the recognized hospitals are charging more than the approved rates on the basis of which they have been recognized, respondents can always de-recognise such hospitals in accordance with rules on the subject because those hospitals cannot take the advantage of getting recognition from the Government and yet charge exorbitantly from the patients (Govt. employees) as well. It was in keeping with this view that the Hon'ble High Court of Delhi also held in the case of Milap Singh (supra) that in case respondent No. 2 had charged a higher rate than could have been charged, it is for Respondent No. 1 to settle the matter with Respondent No. 2. The Hon'ble High court had, in fact, issued direction to the Respondent No. 1 to reimburse the petitioner to the full extent of the bills raised by the Respondent No. 2 hospital within a period of one month from the date of judgment. The petitioner therein was also given cost of Rs.20,000/-.

12. It is not known to me whether Ministry of Health has looked into this matter or not and what was the outcome of it? I leave it at that. I would agree with the

A handwritten signature in black ink, appearing to read 'S' or 'S. J.' followed by a stylized line.

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respondents' counsel that once rates have been fixed, they have to comply with it. The question, however, arises why the Hospitals are being allowed to give the treatment they like and why they are not treating the patient as per approved rates? Broadly speaking, we definitely want to put an end to this kind of practice being adopted by recognized hospitals, which is resulting in unnecessary litigation. Therefore, Ministry is required to take some stringent steps to avoid this kind of litigation at least in future. We would, therefore, direct the respondents to place this judgment before the Secretary, Ministry of Health, who should get these aspects examined and issue necessary clarification to all the recognized/approved hospitals and diagnostic Centres with necessary modifications on the following lines:

- (1) Whenever a case/patient is referred to any recognized hospital or diagnostic Centre for a specific treatment or test, it should invariably be done within the approved rates specified in accordance with the agreement entered into between the CGHS and recognized Hospitals/Institutes/Diagnostic Centres, so that the question of overcharging does not arise;
- (2) However, in case patient wants treatment by a method, which is more expensive and is not approved by the CGHS, he should be asked to give in writing that he wants to have the treatment as per his choice and would bear the expenses over and above the approved rates. Copy of this form/letter duly signed by the patient/or the card holder of CGHS should be sent by the concerned Hospital/Institute or diagnostic Centre to the CGHS at the time of raising the bill and endorsement of same shall be made on the bill also.
- (3) The recognized hospitals/Institutes and Diagnostic Centres should be informed categorically that if they charge over and above the approved



rates without the written consent of patient/card holder of CGHS, their recognition would be withdrawn.

13. In the instant case, it is seen that when applicant had given his application for reimbursement of balance amount of Rs.20530/-, it was rejected in a stereotype manner by stating "nothing is payable to that claim and the amount admissible has already been paid". Nobody has tried to apply mind to the facts as mentioned above. Therefore, the order dated 19.07.2004 cannot be sustained in law. The same is accordingly quashed and set aside. The matter is remitted back to the respondent No. 3 to get it examined keeping in view the observations made in Paras 10 and 11 and to verify why pronova stent was used by the Apollo Hospital, whether it was an emergency requirement looking at the medical case of applicant or it was used due to non-availability of the coronary stent or otherwise. Apollo Hospital should be asked to give a certificate giving reasons why pronova stent was used by them. In case it is found that the pronova stent had to be used by the Apollo Hospital because of non-availability of the coronary stent whereas condition of patient was critical or Doctors attending on him were of the opinion that pronova stent would be more appropriate in given circumstances, in that case full reimbursement of balance amount of Rs.20530/- should be given to the applicant because applicant cannot be made to suffer for the fault of Appolo Hospital. It would, however, be open to the CGHS to settle the matter with Appolo Hospital. However, in case it is found that pronova stent was used as per the desire of applicant because of his choice, the applicant would not be entitled to get the balance amount i.e. over and above the sanctioned amount. These are of course the matters, which would have to be looked into by the Doctors or professionals in medical science. Therefore, Respondent No. 3 is directed to verify all these facts and then pass final speaking orders, under intimation to the



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applicant within a period of three months from the date of receipt of a copy of this order.

14. With the above directions, O.A. is disposed of. No order as to costs.



(MRS. MEERA CHHIBBER)
MEMBER (J)

'SRD'