

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn.No.OA 1300/1993

Date of decision: 30-09-1993

Shri R.K. Jain

...Petitioner

Versus

Union of India through Secretary,
Min. of Health & Family Welfare,
New Delhi & Others

...Respondents

For the Petitioner

...Shri A.K. Behera, Counsel

For the Respondents
CORAM:

...Mrs. Raj Kumari Chopra, Counsel

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

JUDGMENT

(of the Bench delivered by Hon'ble Mr.
Justice S.K. Dhaon, Vice-Chairman)

The petitioner is really aggrieved by the communication dated 11.2.1992 of the Additional Director, Central Govt. Health Service (CGHS) to the Deputy Registrar(A) of this Tribunal that the petitioner's claim for reimbursement of a certain amount had not been allowed as he had taken treatment from an unrecognised hospital.

2. The said document has been produced before us by the respondents.

3. On 20.12.1989, the petitioner made an application to the Director General, Health Services, New Delhi. In the same, it was inter alia stated that he had been suffering from Fistula for quite some time and was treated in the Willingdon Hospital but without any improvement. He was advised to take rest for one week on 10.07.1989. The disease aggravated. He developed high fever and pain. In fact, he became unconscious. On 12.7.1989, he was shifted to Holy Family Hospital by the members of his family where he was hospitalised. He remained there till 24.7.1989. He was again admitted in the said Hospital on 25.8.1989 and remained there till 1.9.1989. On the first occasion he had spent

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Rs.7,709/- and on the second occasion, he had spent Rs.1,055/-, the total being Rs.8,764/-. He remained on medical leave from 10.07.1989 to 22.09.1989.

4. On 2.1.1990, the Deputy Registrar of this Tribunal addressed a communication to the Director General, Health Services, in connection with the claim of the petitioner for reimbursement of the medical expenses. In substance, the Deputy Registrar recommended the claim of the petitioner.

5. On 16.04.1992, the Deputy Registrar of this Tribunal informed the petitioner that the Director of CGHS had by communication dated nil expressed his inability to reimburse his claim as he had taken treatment from an unrecognised hospital.

6. The Office Memorandum dated 18.03.1992 issued by the Govt. of India in the Ministry of Health & Family Welfare, a true copy of which has been filed as Annexure A-5 to this O.A., contains the relevant instructions/rules relating to the reimbursement of medical claim. The said Office Memorandum deals with various subjects one of them being "Settlement of claims of unrecognised Private Hospitals". Under this caption, it is stated that the CGHS does not reimburse treatment taken in Private unrecognised hospitals. However, in cases where treatment had to be taken from a private unrecognised hospital in an emergency, the claims preferred may be referred to CGHS concerned, who, after examining each case on merits, will recommend the admissible amount for payment to the beneficiaries. Such proposals should be recommended by the Head of Departments.

7. We may revert to the order passed by the Additional Director, CGHS. The only reason given in it is that since the treatment had been taken from an unrecognised hospital, reimbursement cannot be allowed. The Office Memorandum permits the consideration of the claim for reimbursement on merits if the treatment has been taken in a private unrecognised hospital in an emergency. Therefore, in order to reject the claim of the petitioner, the authority concerned had to apply its mind in the context of the representation, the facts and circumstances of the case and, then, record a finding whether the petitioner had taken the treatment in a private unrecognised hospital in an

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emergency. The second requirement is that there should be an examination of each case on merits. A reading of the impugned communication of the Additional Director General, CGHS, discloses that he did not apply his mind at all to the two requirements of the Office Memorandum and passed the order mechanically. He glossed over the question that the occasion for reimbursement of the petitioner arose because he had taken treatment in a private unrecognised hospital. The Office Memorandum clearly intends that, if the conditions contained therein are fulfilled, an employee should be reimbursed even though he had taken the treatment in a private unrecognised hospital. For reimbursement a complete ban has not been imposed on availing medical treatment in a non-government hospital. If the exigencies of situation require, an employee can go to a non-government hospital for treatment, and thereafter claim reimbursement. The impugned communication of the Additional Director, CGHS, is not sustainable.

8. In this application, the petitioner has also emphasised that the respondents had, in the case of one Shri O.P. Kshatriya, allowed reimbursement of the medical bills even though he had taken treatment in a private unrecognised hospital. The ld. counsel appearing for the respondents vehemently urged that there is no parallel between the case of the petitioner and Shri Kshatriya. We are refraining from expressing any opinion whether the case of Shri Kshatriya stands on the same footing as that of the petitioner. This question has to be primarily examined by the authority concerned while dealing with the case of the petitioner.

9. This application succeeds in part. The respondents are directed to reconsider the case of the petitioner on merits, in accordance with law and in the light of the observations made above. They shall give a reasoned decision as expeditiously as possible but not beyond a period of six weeks from the date of presentation of a copy of this judgment by the petitioner before

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them.

10. With these directions, this O.A. is disposed of finally.

There shall be no order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL)
MEMBER (A)

S.K. Dhaon
(S.K. DHAON)
VICE CHAIRMAN

SNS