

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

....

Original Application No. 1505 of 20001

this the 22nd day of January 2003.

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

B.D. Chatterjee, Ex Store Keeper of G.E. Engineer Park,
Allahabad and R/o 108 pushpanjalinagar, Bhawapur,
Allahabad.

Applicant.

By Advocate : Sri S.D. Tiwari.

Versus.

1. Union of India through the Secretary, Ministry of
Defence, DHQ, New Delhi.
2. Engineer-in-Chief, Army Headquarters, Kashmir House,
New Delhi.
3. Chief Engineer, Headquarters, Central Command, Lucknow
4. G.E. Engineer, Park Allahabad.
5. CGDA R.K. Puram South Block, New Delhi.
6. CDA, Central Command, Lucknow.

Respondents.

By Advocate : Sri V.V. Misra.

O R D E R

By this O.A., the applicant has sought following
relief(s):

"(i) To issue a suitable order or direction commanding
the respondents to pass and pay the balance amount of
reimbursement claim to the tune of Rs.1.01lac.

(ii) To issue any other order or direction which may deem
fit and proper under the circumstances of the case."

2. The short facts as narrated by the applicant are
that he was working as a Central Government Civilian
employee in MES and retired as Store Keeper Gr.I on
30.7.97 from G.E. Engineer Park, Allahabad after completion
of about 37 years of unblemished service. It is stated



by the applicant that prior to his retirement, he suffered a heart problem as such was taking treatment from CGHS, Allahabad. They referred his case to Escort Heart Institute & Research Centre for further advance treatment. He was made to undergo a by-pass surgery at Escorts on 15.7.97 which is evident from (Annexure 2 page 30). It says he was admitted on 9.7.97, operated on 15.7.97 and discharged on 26.7.97 with advice to take rest for three months. He was immediately sanctioned an amount of Rs. 1.15 lacs by the CDA, Central Command, Lucknow and a cheque for such amount was remitted in favour of Escorts with an undertaking that re-adjustment bill will be finally submitted after completion of treatment and on receipt of final bill from Escorts.

3. It is submitted by the applicant that Escorts gave him a final bill for Rs.2 lacs on 29.7.97 (Annexure-3) by giving break-up of the package deal of Rs.1,85000/- plus break up of Angiography package deal for Rs. 15000/- when the GE Engineer Park, Allahabad submitted the bill for apyment of balance amount of Rs. 85000/-, CDA instead of paying the balance amount passed only an amount of Rs.99000/- and recovered Rs.16000/- from the applicant's leave encashment. Being aggrieved, he gave representation to the CGDA in September'99 with the request to pass the bill for remaining 1.1 lacs (Annexure-4), but since no reply was coming, he gave representations to the prime Minister followed by reminders finally the applicant received a letter dated 8.10.2001 stating therein that CDA sanctioned only an amount of Rs. 99000/- out of 2 lacs (Annexure-9) as reimbursement is regulated under Ministry of Health & Family Welfare letter dated 22th April'98.

3A The contention of the applicant's counsel is that since he was referred to Escorts by CGHS itself, there was no option to the applicant to go to some other hospital and whatever treatment they gave him, he had to take. Since the respondents were also aware themselves issued

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yes had 98
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a cheque for Rs.1.15 lacs in favour of Escorts, they could not have denied the payment of balance amount as ^{they} he had actually paid Rs. 2 lacs to Escorts, nor could ^{they} have recovered an amount of Rs. 16000/- from his leave encashment. He has relied on judgment dated 25.3.96 and number of other judgments ^{given by various benches of Tribunal}

4. The O.A. is opposed by the respondents ^{they} and have submitted that the applicant has been paid an amount of Rs. 101250/- as per his entitlement based on G.O. dated 18.9.96. Since the package deal for by-pass surgery is Rs.99000/- only for semi-private ward, whereas the applicant was entitled for general ward as per his pay 10% less of package deal rate i.e.89100, investigation charges of Rs.12150/-. Therefore, after deducting Rs.101250/- from 115000/-, an amount of Rs.13750/- has correctly been recovered from the retiral benefits of the applicant. They have relied on circular dated 18.9.96 and 5.6.97 wherein in para 15 it is clarified as follows:

"The expenditure to be reimbursed by the parent department/office CGHS, Directorate, as the case may be, would be restricted to the package deal rate/rates approved by the Government from time to time. The expenditure in excess of the approved rates/package deal would have to be borne by the beneficiary himself/herself."

They have relied on 1998(4) SCC 117 in re. State of Punjab & Others Vs. Ram Lubhaya Bagga & Others wherein the Hon'ble Supreme Court has held that right of state to change its policy from time to time under changing circumstances cannot be questioned. It was also held that this being a policy matter its wisdom could not have been judicially scrutinised.

5. The applicant's counsel in Rejoinder has submitted that even in Ram Lubhaya 's case the Hon'ble Supreme Court had taken a different view in different cases depending on the facts of the case. He has relied on para Nos 38 & 39 of the judgment which for ready reference is quoted below:

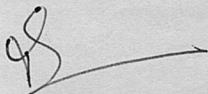


"38. The appeals arising out of SLPs (C) Nos. 12143 and 12144 of 1997 though the treatment at Escorts was after the new policy the amount as claimed has already been paid at Escorts' rates. On the facts and circumstances of this case, we are not inclined to interfere and, therefore, no question of any refund arises. These appeals are dismissed.

39. So far as the appeal arising out of SLP (C) No. 11968 of 1997 is concerned, we find that the respondent had the heart attack on 9.2.95 and was advised to go to Delhi on 18.2.95, but on account of long strike in the All India Institute of Medical Sciences (AIIMS) he was admitted in the Escorts. On those facts, we are not inclined to interfere. The respondent has been paid at the admissible rate in AIIMS but claims the difference between what is paid and what is the admissible rate at Escorts. Looking to the facts and circumstances of this case, we hold that the respondent in SLP (C) No. 11968 of 1997 is entitled to be paid the difference amount of what is paid and what is the rate admissible in Escorts then. The same should be paid within one month from today. We make it clear reimbursement to the respondents as approved by us be not treated as a precedent but has been given on the facts and circumstances of these cases."

He has submitted that his case is also covered under para 39, therefore, he is entitled to be paid the difference.

6. I have heard both the counsel and seen the pleadings as well. Admittedly the applicant was referred to Escorts by CGHS itself and the applicant was not given any option to go to any other hospital as he was referred specifically to Escorts. He was not informed at any point of time that he would be entitled to only 99000/- and rest would be borne by him. On the contrary, CDA had sanctioned Rs.1.15lac and cheque was issued in favour of Escorts. It is not disputed that the applicant was operated at Escorts and they charged him Rs. 2 lacs. It is also not disputed that there is no general ward in Escorts at all. This fact would have been known to CGHS and if the applicant was entitled to only general ward, they should have referred him to AIIMS, but having referred him to Escorts only and having issued the cheque for Rs.1.15 lac knowing fully well the O.M. which is being relied on by the respondents now, I do not think that the respondents were right in recovering an amount of Rs.13750/- from the applicant's retiral benefits. If only, they had given him an option to go to AIIMS or any other



hospital atleast he would have seen his pocket, but since they referred him specifically to Escorts, I do not think that the respondents ^{could have} deducted the amount already paid. Even in Ram Lubhaya's case, the Hon'ble Supreme Court directed the applicant to pay the difference to the respondent in SLP (C) No. 11968 of 1997. Since he had to get himself operated in Escorts because of long strike in AIIMS. The present case is on better footing because here he was referred to Escorts by CGHS themselves. Similarly where the amounts were already paid at Escorts rates even after the new policy, the Hon'ble Supreme Court had refused to interfere and held there was no question of refund. It is also seen that the Hon'ble Supreme Court had made it clear that this was not to be taken as a precedent but the given facts of the present case, I feel do require re-consideration because the bill as given by Escorts has given break-up and barring Rs.16600 that is room rent rest is all either Doctor's fee or Diagnostic charges or for drugs/medicines at page nos. 33 & 34. Infact the particulars of charges shows only Rs.16600 is for total room charges and rest all are charges for surgery or various tests done before by-pass surgery and in 1998(8) SCC 552 the Hon'ble Supreme Court had held that the respondents were liable to pay the amount spent on medical consumables and pharmaceutical items. I am of the considered view that atleast the amount spent on medicines and tests etc. alongwith Surgeon's fees should be reimbursed to the applicant as he was referred to Escorts specifically and the applicant had no option, ^{or} atleast the amount which was already sanctioned should have been ^{not 12-20} recovered from applicant's ^{reimbursement} benefits. ~~refunded~~. The respondents have not given the break-up as to what amount has been allowed out of the bill and what has not been allowed even though Escorts have given full break-up of the package deal, therefore, I think that the ends of justice would be met if this case is remitted back to the authorities to re-consider the facts of the case as explained above in the light of the observations made by

[Signature]

the Hon'ble Supreme Court and pass a detailed and speaking order within a period of three months from the date of receipt of a copy of this order. With above directions, the O.A. is disposed off with no order as to costs.



MEMBER (J)

GIRISH/-