

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 06 of 2001

Allahabad this the 28th day of April, 2004

Hon'ble Mr. A.K. Bhatnagar, Member (J)

Shri B.L. Sarin, S/o Shri U.R. Sarin, R/o Wing No.7, 13/9,
Prem Nagar, Dehradun.

Applicant

By Advocates Shri K.C. Sinha,
Shri Ashish Srivastava

Versus

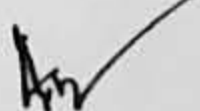
1. Union of India represented through the Secretary to the Govt. of India, Ministry of Defence, South Block, New Delhi.
2. The Commander Works Engineers (Hills), Mall Road, Dehra Dun Cantt.
3. The Controller of Defence Accounts (Army), Meerut.
4. Director, Escorts Heart Institute and Research Centre Okhla Road, New Delhi.

Respondents

By Advocate Shri R.C. Joshi

O R D E R

By this O.A. applicant has prayed for direction restraining the respondents from recovering the amount of Rs.95,007/- or any other amount in monthly installment of Rs.2950/- or of any other amount from his pay or from any other bill. He has also prayed for direction to the respondents to honour the medical claims in respect of treatment received by him in Escorts Heart Institute and Research Centre (for short E.H.I.R.C.) in connection with his by pass surgery of heart. He has further prayed for direction to respondents to refund the amount already



recovered from the applicant from his salary bills and other bills.

2. The brief facts as per the applicant are that he was working as U.D.C. in the Office of respondent no.2 at the relevant time. During the course of his employment, the applicant developed some heart disease requiring specialized treatment, which was locally not available at Dehradun. The applicant was being treated in Dun Hospital, Dehradun, when his condition became serious, he was referred to Medical College, Meerut for further treatment. Ultimately from Medical College, Meerut, he was referred to E.H.I.R.C., New Delhi for further specialized treatment. On application of the applicant, the respondents no.1 and 2 sought the approval of Maha Nideshak Chikitsa Avam Swasthya Sewayain, U.P. who gave necessary permission vide his letter No.11 pha/Anumati/99/9596 dt.28.09.1999 (annexureA-3), where under the applicant was permitted to receive treatment in E.H.I.R.C. at the Government expenses. As the applicant needed by pass surgery of the heart, immediately he inquired about the approximate expenditure involved in the treatment, which was intimated to the applicant by the Commercial Manager, E.H.I.R.C. vide his letter dated 09.06.1999(annexureA-4) that the approximate expenditure on his by pass surgery treatment would be Rs.2,55,000/- including various pathological, other tests and medicines. It is claimed that there is a Circular dated 10.12.1998 of Ministry of Defence regarding medical advances, which provides that the advance may be limited to 90% of the package deal, which will be paid directly to the Hospital concerned and rest of the amount will be payable at the time of final adjustment. Vide Voucher no.00/1055 dated 10.06.1999(annexureA-6) respondent no.2 passed a Contingent Bill of Rs.2,29,000/- i.e. 90% of the estimated amount in favour of E.H.I.R.C. New Delhi against the amount shown as Rs.2,55,000/- by the Commercial Manager, E.H.I.R.C. The applicant with a serious condition admitted in E.H.I.R.C. on 08.06.99 and discharged on 14.06.99 with an advise to undergo the by pass surgery as early as possible. Dr.T.S. Kler of the concerned hospital gave a certificate for the expenditure of Rs.43,010/- which was incurred in the treatment. The applicant again became serious in 1st and 2nd week of July, 1999 and he had to be admitted again on

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12.07.1999 in E.H.I.R.C., where he underwent by pass surgery, and was discharged on 28.07.1999. Dr.Aarti Varma of the said hospital gave a certificate (annexureA-9) for the expenditure incurred during the treatment of applicant. The applicant submitted two bills for reimbursement with the request that after advance of Rs.2,29,000/-, rest of the amount may be paid but the aforesaid bills were passed as follows:-

Amount claimed	Passed	Disallowed
2, 31, 228	1, 04, 950	1, 26, 378
43, 010	24, 227	18, 783
Total <u>2, 74, 338</u>	<u>1, 29, 177</u>	<u>1, 45, 161</u>

3. The applicant submitted an application on 09.10.2000 for payment of bill. The respondent no.3 informed the respondent no.2 to effect the recovery of Rs.95,007/- from the applicant in monthly installments of Rs.2,950/- vide letter dated 23.11.2000. This action of the respondents is under challenge in the present O.A.

4. Learned counsel for the applicant submitted that since the applicant has already informed the respondents about the estimate and charges of E.H.I.R.C., New Delhi vide annexureA-4, against which respondent no.2 issued a cheque on 01.07.1999 directly to E.H.I.R.C. as per para 1(b) of the Policy dated 10.12.1998 (annexureA-5) after obtaining the sanction of Director General (Health) (annexureA-3), therefore, the applicant was under a genuine belief that the expenditure so incurred on his treatment, shall be reimbursed according to the rate of E.H.I.R.C. Thus, the action of the respondents in disallowing the surgery charges including the other charges, is illegal and against the policy laid down by the department. Learned counsel further submitted that had the applicant known earlier about the objection and rate before issuance of cheque, the applicant would not have get the treatment from the E.H.I.R.C. Under the circumstances, applicant is entitled for full reimbursement including 12% interest. Learned counsel for the applicant relied on the following case laws:-

1. 1998(4)S.C.C. Page 117 State of Punjab and others Vs. Ram Lubhaya Bagga and others.

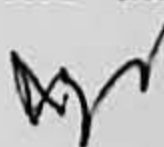
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2. 1997(2)S.C.C.Page 83-State of Punjab Vs.Mohinder Singh Chawla.
3. 2003(1) A.T.J. page 344 V.R. Nagaraja Rao Vs. General Manager.
4. 2002(1) A.T.J. Page 264 R.P. Mehta Vs. U.O.I. & Others
5. 2003(2) A.T.J. page 19 Ram Dev Singh Vs.U.O.I. & Others(Full Bench Chandigarh)Paragraphs 17 & 18.

5. Resisting the claim of the applicant, the respondents filed the counter and submitted that the medical claim submitted by the applicant for a sum of Rs.2,31,328.00 and Rs.43,010/- was regulated in terms of the provisions contained in Govt. of India, Ministry of Health and Family Welfare Department of Health letter dated 18th September, 1996 and in view of the aforesaid provision the amount, as claimed by the applicant, has rightly been not sanctioned as it was not admissible according to the aforesaid instructions. Hence, the impugned orders have rightly been passed and there has been no illegality. It is further submitted that the Notification of 1996 was valid for two years only. The recovery made from the applicant as per Rule 183 of Financial Regulation Part I (annexure C.A.-4). Thus, the respondents in passing the impugned orders have committed no illegality.

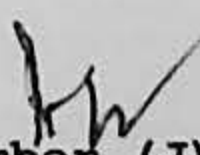
6. In para-4 of the rejoinder affidavit, the applicant has averred that since his operation was held much after 2 years of 1996, as such, the Office Memorandum dated 18th September, 1996 will not be applicable in the applicant's case.

7. I have heard the learned counsel for the parties, considered their submissions and perused the pleadings.



8. Admittedly, the applicant has got his treatment at E.H.I.R.C., Okhla Road, New Delhi and has been operated upon for his by pass surgery at the same hospital. It is also admitted that the applicant was referred from Dun Hospital, Dehradun for Medical College, Meerut for further treatment as the facilities for the deacease of the applicant were not available there and the applicant was again referred for his treatment and surgery in Escorts Hospital by Medical College, Meerut as the condition of the applicant became serious. It is also evident from annexureA-3 that a proper sanction was accorded by the Maha Nideshak, Chikitsalya Awam Swasthya Sewayain U.P. It is also seen that a cheque of Rs.2,29,000/- has directly been sent to E.H.I.R.C. for the treatment of the applicant as per policy dated 10.12.1996 para 1(b). The argument of learned counsel for the applicant is quite convincing that had the applicant known it before the by pass surgery that full reimbursement will not be given to him, he would have adopted other course of his treatment under his income limit.

9. In view of the above discussions and in the light of Judgment in R.P. Mehta's case(supra), I am of the view that the O.A. deserves to be allowed. Accordingly, the O.A. is allowed. The applicant is entitled for reimbursement of full expenditure incurred by him on medical treatment and medical attendance in E.H.I.R.C., Okhla Road, New Delhi for by pass surgery. The respondents are further directed to refund the amount already recovered from the applicant from his salary bills and other bills. The applicant is also entitled for interest at the rate of prevailing bank interest with effect from submission of medical bill up to the actual date of payment by the respondents. The respondents are also directed to complete this exercise within a period of 2 months from the date of receipt of a copy of this order. No order as to costs.


Member (J)

/M.M./