

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 795 of 2003

Allahabad this the 22nd day of Sept. 2004

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

B.D. Chatterjee, Ex. Storer Keeper of G.E. Engineer Park,
Allahabad & Resident of 108, Pushpanjali Nagar, Bhawapur,
Allahabad.

Applicant

By Advocate Shri S.D. Tiwari

Versus

1. Union of India through the Secretary, Ministry of Defence, DHQ Post, New Delhi.
2. Engineer-in-Chief, Army Headquarters, Kashmir House, New Delhi-11.
3. Chief Engineer, Headquarters, Central Command, Lucknow.
4. Chief Engineer(Air Force), Allahabad.
5. Garrison Engineer, Engineer Park, Allahabad.
6. C.G.D.A. West Block-V, R.K. Puram, New Delhi.
7. P.C.D.A. Central Command, Lucknow Cantt., Lucknow.

Respondents

By Advocate Shri S.K. Anwar
Shri V.V. Misra

O R D E R

By this O.A. filed under Section 19 of the
Administrative Tribunals Act, 1985, the applicant has..pg.2/

prayed for quashing the rejection order issued by the respondent no.7 vide letter dated 26.03.2003 (annexure-17) with a further direction for quashing the speaking order dated 16.04.2003 (annexure-18) passed by respondent no.4. He has further prayed for a direction to the respondents to pass and pay the balance amount of reimbursement claim to the tune of Rs.98,750/- with 18% interest with effect from denied dated.

2. The brief facts giving rise to this O.A., as per the applicant, are that the applicant retired as Store Keeper Grade-I on 31.07.1997 from G.E.Engineer Park, Allahabad after completion of about 37 years of unblemished services. Prior to his retirement during May/June, 1997, the applicant suffered from heart ailment and was under treatment of C.G.H.S., Allahabad. When the case became beyond the control of C.G.H.S., Allahabad, he was referred to Escorts Heart and Research Centre, New Delhi for advance treatment, which is an approved hospital, by the C.G.H.S. Card dated 31.05.1997 (ann.-1) The applicant was admitted in Escorts Heart Institute as a case of Coronary Artery disease on 09.07.97 and underwent a coronary artery by pass graft surgery on 15.07.1997. He was discharged from Escort Heart Institute (for short E.H.I.) with an advice to take rest for three months. The E.H.I. issued a final bill no.002994 on 28.07.1997 for Rs.2 lakhs. The G.E.Engineer Park, Allahabad submitted a bill for Rs.1.40 lakhs as an advance to P.C.D.A., Lucknow. The P.C.D.A. Central Command, Lucknow passed an amount of Rs.1.15 lakhs as an advance and remitted the cheque in favour of E.H.I., New Delhi with an understanding that readjustment bill would be submitted after completion of treatment and on receipt of final bill. On

31.07.97 the applicant get retired from service. The G.E. Engineer Park, Allahabad on 28.08.1997 submitted the adjustment medical claim, as per the bill for Rs.2 lakhs issued by Escort Heart Institute. The P.C.D.A., Lucknow passed only an amount of Rs.99,000/- against the total amount of Rs.2 lakhs and recovered an amount of Rs.16,000/- from the leave encashment of the applicant. Thereafter, applicant submitted a representation to C.G.D.A., New Delhi (respondent no.6) and requested for balance payment of his reimbursement claim. The applicant ^{Sent} representation also to Hon'ble Prime Minister with a copy to other authorities in the respondents establishment on 28.01.00 07.08.00, 28.11.00 and on 04.06.01. On 08.10.01 the respondent no.3 intimated the applicant that reimbursement claim for Rs.2 lakhs was recommended and submitted but P.C.D.A. Lucknow-respondent no.7 passed only an amount of Rs.99,000/-. Being aggrieved applicant filed an O.A. No. 1505 of 2001 before this Tribunal on 11.12.01. On 12.01.02 the applicant was again given Rs.2250/- against his reimbursement claim. Accordingly he was paid Rs.1,01,250/- against his reimbursement claim of Rs.2 lakhs. By order dated 22.01.2003 this Tribunal directed the respondents to reconsider the case of the applicant within a period of three months from the receipt of the Judgment. In compliance of the order, the P.C.D.A. Central Command, Lucknow justified the amount of Rs.1,01,250/- against the total reimbursement claim of Rs.2 lakhs and requested the G.E. Engineer Park, Allahabad to pass speaking order. On 16.04.2003, the Chief Engineer, Air Force, Allahabad who was not a party in O.A. No. 1505 of 2001, has passed an order, against which applicant has filed this O.A.

3. Learned counsel for the applicant submitted that the applicant is entitled for reimbursement of total amount of Rs.2 lakhs as charged by the Hospital, as per the Central Services Medical Attendance Rules, 1944 and hence rejection of even part of the claim is violative of the Rules. Learned counsel further submitted that applicant was referred by the C.G.H.S., Allahabad to Escorts Hospital so the applicant had no choice to get treatment in any other hospital, as such, he is entitled for reimbursement of the total amount, as charged by the above institute. Moreover Escort Heart Institute and Research Centre(for short E.H.I. R.C.) is approved by the Government for medical attendance. It is further contended that the applicant had actually incurred the expenditure as per the bill presented by the hospital, so he is entitled for the total amount. As the applicant is retired employee, therefore, rejection of any amount of his medical reimbursement claim is arbitrary, inhumane and against the services rules and conditions. It is further claimed that there is only one type of ward in E.H.I.R.C., as such, denial of room rent charged by the Hospital, is illegal.

4. Resisting the claim of the applicant, the respondents filed counter affidavit, which was followed by a rejoinder, filed by the applicant.

5. Inviting my attention to paragraph no.4 of the counter-affidavit, learned counsel for the respondents submitted that letters dated 26.03.2003 and 16.04.2003 were issued in the light of item no.3-5 of annexure-II received under Government of India Ministry of Health & Family Welfare O.Ms dated 18.09.96 and 05.06.97, filed as annexure no.C.A.-1 and C.A.-2 respectively. So the orders

are absolutely justified and need no interference.

It is submitted by the respondents that the All India Institute of Medical Sciences, New Delhi was not in the list of authorised hospital for C.G.H.S. beneficiaries hence the applicant was referred to E.H.I.R.C., New Delhi for his immediate treatment. It is also admitted in para-9 of the counter-affidavit that bill of the applicant for Rs.2,00,000/- was forwarded to Principal Controller of Defence Account, Central Command, Lucknow by Garrison Engineer(E/P) Allahabad. Learned counsel for the applicant invited my attention to para-11 of the counter affidavit and submitted that as per the O.M. dated 05.06.97 the applicant is authorised for payment of claim as per package deal rate only. The relevant para-15 of the letter is being reproduced below:

"Expenditure to be reimbursed by the parent department/ office, CGHS directorate as the case may be, would be restricted to 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.

The rate list towards charges for Coronary by pass surgery is Rs.99,000/-, hence the amount of Rs.99,000/- later on Rs.2250/- was also admitted by Principal Controller of Defence Account, Central Command, Lucknow. He further submitted that the applicant is entitled for reimbursement of his claim as per recent rules and orders of Government, and Medical Attendance Rule, 1944 is not applicable in the case of the applicant as he is a C.G.H.S. beneficiary. In support copy of letter dated 26.12.2002 annexure C.A.-5 is filed. Placing reliance on 1998(4) S.C.C.117 State of Punjab Vs. Ram Lubhaya & Others, learned counsel submitted that as held by the Hon'ble Supreme Court the right of State to change its policy from time to time under changing contig.

circumstances cannot be questioned. It was also held that this being a policy matter its wisdom could not have been judicially scrutinised. Learned counsel for the respondents finally submitted that there is no illegality in the orders passed by the respondents in reimbursing the claim of the applicant as Rs.1,01,250/- in place of Rs.2 lakhs, as claimed by the applicant.

6. Learned counsel for applicant in rejoinder has stated that in even Ram Lubhaya case, the Hon'ble Supreme Court had taken different view in different cases depends upon the facts of the case. He placed reliance on para-38 and 39 of the case and submitted that the case of the applicant is covered by para-39 of the above case which is reproduced 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 9.2.1995 and was advised to go to Delhi on 18.2.1995 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."

7. I have heard the learned counsel for the parties and perused the record.

8. Admittedly, the applicant was referred by the C.G.H.S. to E.H.I.R.C. vide reference letter dated 16.06.02 filed as annexure-1 to the O.A. It is also an admitted fact that the applicant was suffering from serious heart ailment and required immediate heart surgery. There is also no dispute that the applicant was never asked for his choice to go to any other hospital. It is also not disputed that the applicant was admitted on 09.07.97 in E.H.I.R.C. and underwent coronary surgery on 15.07.1997 and was discharged on 26.07.1997 with advice to take rest for 3 months, as is evident from letter dated 30.07.97, filed as annexure-2. I have also gone through annexure-3, which is a bill of Rs.2 lakhs, issued by the hospital along with break up of package deal of Rs.1,85,000/- dated 28.7.97 and break up of Angiography package deal of Rs.15,000/-. It is also evident that the applicant was not asked to go to any other hospital as he was referred specifically to E.H.I.R.C. He was not informed at any time that he would only be entitled to Rs.99,000/- and rest amount would be borne by him. On the other hand, C.D.A. had sanctioned Rs.1.15 lakhs by cheque directly in favour of E.H.I.R.C. It is also admitted fact that the applicant was operated and got treatment at E.H.I.R.C., and for the same he paid Rs.2 lakhs. This is also an admitted fact that there is no general ward in the Escorts. Having known all these facts, the respondents referred the applicant for surgery particularly to Escorts Hospital having full knowledge of the O.M., which is being relied upon by the respondents know. I do not think that the respondents were right in

recovering the amount of Rs.13,750/- from the applicant's retiral benefits. If the respondents have given an option to the applicant for refering to All India Medical Science or any other hospital, atleast he would have a ^{chance} to see that he could be able to manage this much of amount or not but in this case the respondents have directly referred him specifically to E.H.I.R.C. I do not think that respondents can deduct the amount already paid by the applicant in E.H.I.R.C.

89. Learned counsel for the parties are relying upon the case of Ram Lubhaya Bagga and Ors(supra) and are interpreting in their respective favours. In that case Hon'ble Supreme Court has directed the department to pay the difference amount of what is paid and what is the admissible rate at Escorts then. In the relied upon case the employee had an option to get treatment at All India Medical Sciences but because of long strike at All India Medical Sciences, he got treatment in E.H.I.R.C. but in the present case before me the applicant was directly referred to E.H.I.R.C. by the C.H.H.S. itself so the case of the applicant is distinguishable and is on better footings.

10. I have also seen annexure-3(Comp.II) which is a bill of Rs.2 lakhs issued by the E.H.I.R.C., which include Rs.16,600/- as room charges, plus Rs.1,85,000/- as surgery charges and plus other charges, required for the surgery of the applicant. In 1998(8) S.C.C. 552 D.K. Singh Vs. State of Punjab & Others, the Hon'ble Supreme Court has held that the respondents are liable to pay the amount spent on medical consumable and pharmaceutical items.

11. I have gone through para-18 of the Medical Attendance Rules, relied upon by the respondents counsel Para-1(a) is reproduced below:-

"The beneficiaries will have the option of availing specialized treatment diagnostic tests at CGHS recognized hospitals diagnostic centre of his/her choice after specialist of CGHS-Government hospital/ C.M.O. incharge of CGHS dispensary recommends the procedure/test."

which clearly states that there will be an option given to the applicant by the respondents so that he could avail the services of specialised hospital, as per his monetary conditions, whereas no option has been given in the present case.

12. I have also seen the order passed by this Tribunal in O.A.No.1505 of 2003 on 22.01.2003 by which respondents were directed to reconsider the case of the applicant in the light of observations made by the Hon'ble Supreme Court and pass a detailed order within a period of 3 months. In compliance of which, annexure-17(compilation-1) has been passed.

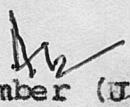
13. In the present case, the applicant was referred to Escorts Hospital by C.G.H.S. itself. Similarly where the amounts were already paid at Escorts rates even after the new policy, the Hon'ble Supreme Court had refused to interfere and held there was no question of refund. It is also seen that the Hon'ble Supreme Court had made it clear that this was not to be taken as a precedent but on the given facts of the present case. In the break up charges filed as annexure-3 I find that all the amounts show are charges for surgery or various tests required to be done before by-pass surgery, and in the case of . . .

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D.K. Singh(supra), the Hon'ble Supreme Court had held that the respondents were liable to pay the amount spent on medical consumable and pharmaceutical items. In the present case, no option was given to the applicant by the respondents to think over as to whether he would be able to spend so huge amount from his pocket. Moreover, he was directly referred to E.H.I.R.C. specifically, as is evident from annexure-1(Comp.2) so I find that the applicant is in no way found to have get himself operated upon in the Escorts Hospital by his own choice. It is also clear that the amount was directly sent by the department to Escorts Hospital.

14. In view of the above facts and circumstances and in the light of Judgments cited above, I am of the view that the applicant is entitled for the relief, which he has sought through the present O.A. Accordingly O.A. is partly allowed. The orders dated 26.03.2003(annexure-17) and 16.04.2003(annexure-18) are quashed and set aside. The respondents are directed to pay the balance amount of reimbursement claim to the tune of Rs.82,150/- plus charges for accommodation in general ward as admissible in the case of the applicant with present prevailing bank interest w.e.f. the denied date to the applicant, within a period of two months from the date of receipt of a copy of this order. No order as to costs.


Member (J)

/M.M./