

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.471/2001

Thursday this the 14th day of February 2002.

CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN  
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.P.Damodaran,  
Retired Licensing Assistant,  
39/2730, Kizhakke Illom,  
D.H.Road, Kochi-682 016. - Applicant

(By Advocate Shri M.V.Somarajan)

Vs.

1. The Joint Director,  
Central Government Health Scheme,  
3/45, Kesavadasapuram,  
Trivandrum-695 004.
2. Union of India,  
represented by its Secretary,  
Ministry of Health & Family Welfare,  
New Delhi.
3. The Addl. Deputy Director General(HQ),  
Dte. General of Health Services,  
Nirman Bhavan,  
New Delhi. - Respondents

(By Advocate Shri C Rajendran, SCGSC)

The application having been heard on 14th February 2002  
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant who retired as Licensing Assistant in the Office of the Joint Director General of Foreign Trade in the Ministry of Commerce has been a member of the Central Government Health Scheme (CGHS for short) from 1996 onwards. His wife while residing in Chendamangalam, on 19.2.1999 developed breathing problem and chest pain and it was decided to take her to Trivandrum for specialised treatment. However, on the way to Trivandrum on 20.2.1999 it appeared that her

condition became very critical requiring her immediate admission in the nearby hospital Amritha Institute of Medical Science & Research Centre at Ernakulam where the costs of treatment is around 30% less than the cost of All India Institute of Medical Sciences, Delhi and other recognized CGHS hospitals. The applicant's wife underwent treatment and was discharged on 26.2.1999. An amount of Rs.13,072/- was spent by the applicant for the treatment of his wife as is seen from Annexures A2(a) and A2(j). When the applicant preferred the claim for reimbursement of the said amount the claim was rejected by the impugned order dated 12.7.99(A5) of the Joint Director, CGHS, Trivandrum for the reason that the treatment was taken in a private unrecognised hospital beyond the CGHS covered area. Aggrieved by the rejection of the claim, the applicant filed O.A.341/00. The Tribunal by order dated 11.1.2001 finding that reimbursement would be possible only if specifically authorized by the Ministry of Health and Family Welfare, directed the applicant to make a representation to the 2nd respondent, Secretary, Ministry of Health and Family Welfare explaining the circumstances and directing the second respondent to consider the same and pass appropriate order therein within two months from the date of receipt of the representation bearing in mind the rulings of the Apex Court and other High Courts on the subject.

2. Pursuant to the above direction the applicant submitted a detailed representation to the second respondent on 24.1.2001. The applicant submitted his representation explaining the emergent situation in which his wife had to be

admitted in the Amritha hospital and prayed for sympathetic consideration. In purported implementation of the directions of the Tribunal in reply to the above representation the applicant has been served with the impugned order A-9 dated 27.2.2001 issued by the 3rd respondent, Additional Deputy Director General (HQ) for the CGHS denying the claim on the ground that the case having been re-examined in consultation with the Ministry of Health and Family Welfare and that it was found that the decision of the Joint Director, CGHS, Trivandrum contained in A-5 dated 12.7.99 would stand. It is aggrieved by this the applicant has filed this application impugning the order dated 12.7.99 of the Joint Director, CGHS, Trivandrum as also that of the 3rd respondent stating that the decision contained in A-5 would stand. The impugned orders are assailed on the ground that the orders were passed without application of mind to the rules and rulings on the subject. It is also alleged in the application that in exactly under similar circumstances the reimbursement was granted to one Mr.KP Hari, a pensioner, for treatment of his wife in Lourdes Hospital, Ernakulam which was also an unrecognized hospital situated outside the CGHS area, and that the denial of the applicant's claim amounts to hostile discrimination.

3. The respondents in their reply statement contend that the treatment having been taken in a hospital which is not recognized, and situated in a an area which is not covered by the CGHS, the claim is not sustainable. The grant of benefit under A-10 order to Shri KP Hari is sought to be justified on the ground that relaxation is considered and decided on case to

case basis. The respondents, therefore, contend that the application is only to be dismissed.

4. We have gone through the application, reply statement and all the other material placed on record and have heard Shri Somarajan, learned counsel appearing for the applicant and Shri C.Rajendran, SCGSC appearing on behalf of the respondents. There is no dispute regarding the facts in this case. The applicant is a retired civil servant and, a card holder of CGHS. The treatment of the applicant's wife was had outside the CGHS area in a private hospital which is not recognized. According to Clause 17(3) of CGHS compilation, the facilities under the scheme would be available to pensioners limited to the area covered by the scheme, and no reimbursement is to be made when pensioners and members of their families take medical treatment at a place not covered by the scheme, unless specifically authorized by the Ministry of Health. Therefore, generally, if treatment is had by the pensioner who is a card holder or by a member of his family outside the CGHS area and in private hospital, the expenses incurred would not be reimbursable unless such reimbursement is specifically authorized by the Ministry of Health and Family Welfare. Ministry of Health and Family Welfare, therefore, is empowered to relax the rules and to grant reimbursement taking into account the genuineness of the claim and the emergency of the situation. It is argued by the learned counsel of the respondents that since the applicant did not take prior permission for treatment outside the CGHS area, the claim cannot be entertained. We find little justification for such

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an argument. As a matter of common knowledge, diseases come without notice when same is suddenly affected by a serious ailment. The first attempt would be to get treated rather than going through the finalities of approaching the Ministry for permission. The applicant has alleged that on the way to Trivandrum, the applicant's wife had to be admitted in Amritha Institute of Medical Sciences and Research Centre under emergent circumstances and this fact is borne out from the materials placed on record. (Annexure A2(a) to A2(d)). This statement has not been denied by the respondents in their reply statement also. Therefore, the applicant could not have got prior approval for treatment in private hospital out side the CGHS area as the admission and treatment was under the emergent circumstances to save life. When the Tribunal had in its order in O.A.341/00 directed the second respondent, Secretary, Ministry of Health and Family Welfare to consider the representation in accordance with the rules and instructions including the rulings of the Apex court on the subject, the second respondent should have given due consideration and passed orders. Instead of that we find that the 3rd respondent has purportedly under consultation with the Ministry of Health and Family Welfare turned down the applicant's claim without going into the merits of the same in the light of the rules, rulings and instructions on the subject as directed by the Tribunal in its order in O.A. 341/2000. This method of disposal of the representation, we are unhappy to say, is in a total disregard to the directions of the Tribunal. The 2nd respondent was bound to consider the request of the applicant with reference to the rules and rulings of the Supreme Court

and other High Courts. This has not been done. In Narendrapal Singh Vs. UOI & others (1999 LAB. IC 1861), the High Court at Delhi had occasion to consider a situation almost identical to the case at hand. On a survey of the rulings of the Apex Court on the subject, it was held by the Delhi High Court that as the treatment was taken in an emergent situation in a private hospital the competent authority was bound to grant ex-post facto approval for reimbursement of the expenditure incurred for treatment. The facts in the case on hand are almost identical and we are of the considered view that the principles in the decision of the Hon'ble High Court of Delhi is applicable to the facts of this case also. Normally, this Tribunal would have sent the matter back to the second respondent for a reconsideration, but, in this case as the 2nd respondent has despite the order of the Tribunal in O.A. 341/00 not examined the claim of the applicant in the light of the rules and ruling on the subject, we are of the view that to remit the matter to the second respondent would only cause delay and injustice to the applicant. The interest of justice demands a direction to the respondents to reimburse the expenses incurred by the applicant granting ex-post facto approval by the competent authority for the treatment.

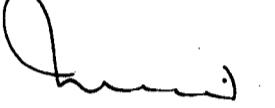
5. In the light of what is stated above, the impugned orders are set aside. The respondents are directed to make reimbursement to the applicant of the amount of Rs.13072/incurred for the treatment of his wife in the Amrittha

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institute of Medical Science and Research Centre, Ernakulam granting ex-post facto sanction to the same by the second respondent. The above exercise shall be completed and the payment should be made within a period of three months from the date of receipt of a copy of this order. We are not inclined to grant interest.

6. Application is allowed. No costs.

Dated, the 14th February, 2002.

  
T.N.T. NAYAR  
ADMINISTRATIVE MEMBER

  
A.V. HARIDASAN  
VICE CHAIRMAN

#### APPENDIX

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Applicants Annexures :

1. A-1: True photocopy of the Central Govt. Health Scheme Card No.20324 dated 7.10.96 issued by the 1st respondent.
2. A-2: True copy of the application for medical reimbursement dated 21-4-99 submitted by the applicant to the 1st respondent.
3. A-2(a): True copy of the check list dated 20.4.99 forwarded alongwith claim application to the 1st respondent.
4. A-2(b): True copy of the claim in Med-97 dated 20-4-99 forwarded alongwith claim application to the 1st respondent.
5. A-2(c): True copy of the Essentiality Certificate in Form 'B' dated 12-4-99 forwarded alongwith claim application to the 1st respondent.
6. A-2(d): True copy of the certificate of emergency issued by the head of the department of Cardiology, AIMS, Kochi dated 12-4-99 forwarded alongwith the claim application to the 1st respondent.
7. A-2(e): True copy of the cash bill No.5855 dated 20-2-99 for Rs.1770/- forwarded to the 1st respondent.
8. A-2(f): True copy of the bill No.5976 dated 20.2.99 for Rs.250/- forwarded alongwith the claim application to the 1st respondent.
9. A-2(g): True copy of the Cash Bill No.23879 dated 26-2-99 for Rs.120/- forwarded alongwith the claim application to the 1st respondent.
10. A-2(h): True copy of the cash bill No.23928 dated 26-2-99 for Rs.202/- forwarded alongwith the claim application to the 1st respondent.
11. A-2(i): True copy of the cash bill No.7300 dated 26-2-99 for Rs.10,730/- forwarded alongwith the claim application to the 1st respondent.
12. A-2(j): True copy of the hospital discharge certificate dated 26-2-99 forwarded alongwith the claim application to the 1st respondent.

13. A-3: True copy of the self-explanatory letter by the applicant dated 20-4-99 forwarded alongwith the claim application to the 1st respondent.

14. A-4: True copy of the order No.S-12020/4/97-CGHS(P), Govt. of India, Ministry of Health & Family Welfare, New Delhi dated 7-4-1999.

15. A-5: True copy of the order No.Ac.96/99-2000/CGHS/Tvm/465 dated 12-7-99 issued by the 1st respondent.

16. A-6: True copy of the reply statement dated 23-5-2000 filed by the 1st respondent in OA No.341/2000.

17. A-7: True copy of the final order in OA No.341/2000 passed by the C.A.T. Ernakulam on 11-1-2001.

18. A-8: True copy of the representation dated 24-1-2001 preferred by the applicant to the 2nd respondent.

19. A-9: True copy of the order No.C.14012/11/2000-CGHS/Tvm/D.I dated 27-2-2001 issued by the 3rd respondent.

10. A-10: True copy of the order No.D-12028/3/97-CGHS DESK-I/CGHS(P) dated 13-1-2000 issued by the 2nd respondent.

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