

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 536 OF 2007

Dated the 5th March, 2008

CORAM:-

HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN

M.K. Venugopalan,
S/o Komlavally Amma,
Work charged Motor Driver,
Sub Division, Civil Construction Wing,
Akashvani and Doordarshan,
CSEZ. PO, Kochi-37.

.. Applicant

[By Advocate: Mr Rajesh R Pillai)

-Versus-

1. Prasar Bharati,
Broadcasting Corporation of India,
Doordarshan Bhavan, New Delhi,
Represented by its Director General.
2. The Superintending Engineer (Civil),
Civil Construction Wing,
Akashvani and Doordarshan,
Swami Sivananda Salai, Chennai.
3. The Executive Engineer,
Civil Construction Wing, Akashvani and Doordarshan,
CSEZ. PO, Kochi-37.

....Respondents

[By Advocates: Mrs Aysha Youseff, ACGSC)

This application having been heard on 27th February, 2008 the Tribunal delivered the following -

ORDER

The applicant is working as a Workcharged Motor Driver at the Civil construction wing of Akashvani-Doordarshan at Kochi. He has filed this application challenging Annexures- A6 & A7 orders of the respondents rejecting his claims for reimbursement of



medical expenses incurred by him for the treatment of his mother. The applicant's mother was suffering from vision disorders and she was treated by one Dr N.S.D Raju in the Department of Ophthalmology at Cochin hospital, Ernakulam , which is an approved hospital as per the CS (Medical attendance) rules. The above mentioned doctor issued a referral certificate dated 12.2.2007 advising treatment at Ranjini Eye Care hospital, Vyttila as the Cochin hospital is not having the facilities to perform the above surgery. The applicant then preferred a representation to the 3rd respondent requesting for permission to carry out the emergency surgery at Ranjini Eye care hospital. On 22.2.2007, the applicant was informed that the 2nd respondent was the competent authority to consider his request. Annexure A3 representation was immediately preferred by the applicant on 22/2/07 itself explaining the urgency of the matter and requesting for permission. The surgery was performed on 28.2.07 and an amount of Rs 20854/- was spent. Thereafter the applicant submitted a bill for reimbursement along with all documents on 2.7.07. However on 07.07.07, the applicant received a letter stating that the 2nd respondent had conveyed approval for treating his mother at Gowtham hospital. Subsequently A7 letter was also received from the 3rd respondent stating that reimbursement cannot be granted since the treatment was taken at a private hospital and there is no approval of the competent authority.

2] The applicant has alleged that no approval from the respondents was required for the treatment at Gowtham hospital which is an approved hospital and A6 letter has been issued with



the malafide intention of refusing the claim for reimbursement and the decision taken by the authorities was illegal and arbitrary. He has relied on the following judgements of the Hon Supreme court;-

Ms Radhakrishna Agarwal v. state of Bihar, 1977 3 SCC457

EP Royappa vs State of Tamilnadu. 1974 4 SCC 3

Surjit Singh vs state of Punjab, 1996 11 SCC336.

3] Reply and additional reply statements have been filed by the respondents. According to them the applicant is to get medical attendance as provided under rule 2(a) to (h) of CS (MA) rules at annexure R1. The applicant did not consult the authorized medical attendant as provided under the rules and even though he was advised by the office, he ignored the directions given and got treatment for his mother in a private clinic owned by the physician who advised the applicant. Gowtham hospital has all facilities for treatment of eye related diseases and after verifying the same approval was given for treatment there. It is not for the applicant to decide for himself where to take treatment for which rules are to be followed. Availability of better facilities cannot be an excuse.

4] The respondents have rejected the claim as it is against the provisions of the CS (MA) Rules and they have every right to do so. Hence the acts of the applicant are illegal and his contentions misleading. It is further submitted that the applicant having approached the tribunal in two other cases is very well aware of the Rules and the applicant and others were duly advised about the necessity of consulting the authorized medical attendant and they cannot profess ignorance of the same.

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5] In the rejoinder, the applicant has averred that the doctor attached to the approved hospital is also an authorized medical attendant and under emergency circumstances surgery was performed otherwise the patient would have lost her vision permanently. He has also enclosed the orders of this Tribunal and the Hon High court in the earlier cases filed by him in OA320 of 2000. 501/2000 and the judgement of the High Court in OP 13913 of 2001, in which the very same issues were considered and the claims of the applicant were allowed in full.

6] I heard Learned counsel Sri Rajesh Pillai for the applicant and Smt Ayesha Yousef for the respondents.

This is yet another case of treatment taken in a private hospital in an emergent situation and denied reimbursement on the count that rules were not followed and permission was not taken from the competent authority in time. This Tribunal and the higher courts have always taken a view in favour of the employees in such cases, keeping in view that the right to life is a valuable one and the government is required to fulfill its constitutional obligation to its employees while in service and after retirement from service. This sentiment has been echoed forcefully by the Supreme court in the case of *Shakuntala -vs- state of Haryana*, 2004 1 SLR in the following words:-


" Denial of medical reimbursement only on ground that treatment was not taken from the approved hospitals not acceptable. But emergency knows no law- saving the life of a person should be the paramount consideration."

7] There are a few mitigating circumstances also in the instant case. The respondent's contention that the applicant willfully ignored Annexure R3 and obtained treatment is not borne out by



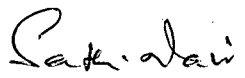
the facts on record. On the other hand he had taken his mother for treatment to an approved hospital and the reference certificate was given by the doctor who treated the patient. The plea that he was not an authorized medical attendant is not relevant in such a situation. He had approached the authorities in time explaining all the emergent circumstances. The so called reply given by the respondents is only advising the applicant to approach the competent authority which he did promptly. Perhaps the only lapse on his part as rightly pointed out is that the applicant should have approached the Chief medical officer for sanction when he found that other hospitals did not have the required facility. But this lapse is condonable when we note that the surgery was performed on 28.2.07 as the patient was reportedly in danger of losing her vision and in such circumstances the applicant cannot be blamed for not following the time consuming procedural formalities. The respondents replied to the applicant conveying approval for treatment at Gowtham hospital after the applicant submitted the claims for reimbursement. The applicant could not have waited interminably for such an approval. Therefore the applicant's case has to be treated as an emergency treatment and relevant rules made applicable.

8] The other contention of the respondents is that the treatment was taken in the private clinic of the doctor who treated the patient and hence Note 7 under Rule 2(e) is attracted. But this instruction in the Note is meant to be followed by the Medical officers and if any violation is detected, it is for the authorities to take action against the doctors and



the applicant cannot be penalised for the same. Moreover this plea was not taken at all by the respondents in the impugned orders and cannot be brought in against the applicant at this stage.

9] In view of the above discussions and the legal position, I am of the view that the rejection of the claim of the applicant for reimbursement of the expenses incurred for treatment of his mother in the Private hospital in an emergency was not correct. Now that the respondents by Annexure-R7 have conveyed their approval for treatment in Gowtham hospital, the claim has to be allowed to the extent of the expenditure that would have been incurred had the treatment been taken there, if the same was available at the Gowtham hospital. If it is not available, the applicant shall be reimbursed the expenses incurred in Renjini Clinic to the extent as admissible under the CS (MA) rules as provided in Appendix-VIII- Reimbursement in relaxation of Rules in Emergent cases. Annexure A7 is quashed. OA is allowed.


(Sathi Nair)
Vice Chairman

Stn/uc