

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 117 of 2009

Thursday, this the 8th day of July, 2010

C O R A M :

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Elsy Varghese,
W/o. Varghese,
Assistant Engineer,
All India Radio, Calicut,
Residing at D-III/4, AIR Quarters,
Karaparambu P.O., Calicut : 673 010

.... Applicant.

(By Advocate Mr. Vinod Chandran K)

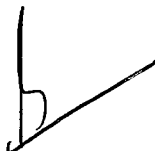
v e r s u s

1. Union of India represented by its
Secretary, Ministry of Information &
Broadcasting, New Delhi.
2. Prasar Bharati (Broad Casting
Corporation of India) All India Radio,
Parliament Street, New Delhi : 110 001
Represented by its Director General
3. Station Director/Station Engineer,
Prasar Bharati (Broad Casting Corporation
of India), All India Radio, Calicut.
4. Director General,
Office of the Directorate General,
All India Radio, New Delhi.

... Respondents.

(By Advocate Mr. A.D. Raveendra Prasad, ACGSC)

The Original Application having been heard on 02.07.10, this Tribunal
on 08-07-10 delivered the following :

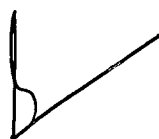


ORDER**HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

In this second round of litigation, the applicant seeks a direction to the respondents to reimburse the entire medical expenses for the applicant's husband's medical treatment at the Apollo Specialty Hospital, Chennai, in accordance with decision No. 11 (2) (b) under Rule 11 of Central Services (Medical Attendance) Rules, 1944.

2. The applicant's husband was treated for Osteoporosis at Calicut. His condition was correctly diagnosed as multiple myeloma in the Apollo Specialty Hospital, Chennai. As the treatment for the disease was not available in Kerala, he was allowed to be treated at the Apollo Specialty Hospital, Chennai, for which purpose, the department deposited an amount of Rs. 8 lacs with the hospital. After settling the bill with the Apollo Specialty Hospital at Rs. 7,17,753/-, the respondents sought to recover an excess amount of Rs. 38,560/- paid by them to the hospital from the applicant which was disallowed by this Tribunal in OA No. 679/2006. As regards recovery of further disallowed amount, the respondents were directed to reconsider the matter. On reconsideration, vide Annexure A-6, the respondents declared an amount of Rs. 1,67,481/- inclusive of Rs. 38,560/- excess charged by the hospital as inadmissible. Hence the O.A.

3. The applicant submits that her husband is eligible for reimbursement of medical expenses for the treatment taken at the Apollo Specialty Hospital, Chennai, which is a recognized hospital under the CGHS. He was treated at the Apollo Specialty Hospital, Chennai, as the treatment for multiple myeloma was



not available in the State which was certified by the Director of Health Services, Kerala. The claims submitted by the applicant were in accordance with the CS (MA) Rule 11, decision No. 11(2)(b). Therefore, the reduction of the amount now made by the respondents is illegal and arbitrary and the applicant prays for full reimbursement of the bills for the treatment of her husband at the Apollo Specialty Hospital, Chennai.

4. The respondents submitted that the settlement of the medical claim is based on decision No. 2 of Rule 11 of CS(MA) Rules, which allows full reimbursement in cases no rates or facilities are available. The amount claimed by the applicant by way of reimbursement is not in accordance with CS(MA) Rules which mandate the medical expenses either as reimbursable or non reimbursable. The applicant was asked to pay the balance inadmissible amount of Rs. 1,28,921/- which included inadmissible consultation charges of Rs. 1,07,150/- and the cost of inadmissible medicine of Rs. 21771/-. Wherever rules permit, it was submitted by the respondents, the department would not hesitate to pay the legitimate amount to the applicant and inadmissible cases will not be entertained. They submitted that considering all these aspects, the O.A. should be dismissed.

5. The issue to be determined in this O.A. is how to interpret decision 11(2) (b) under Rule 11 of CS(MA) Rules in the facts and circumstances of the case. The relevant decision is reproduced as under :

"Charges for treatment in private hospitals

(11) Reimbursement of charges for various treatments/ examinations taken in private recognized hospitals under CS (MA) Rules, 1944.- The Ministry of Health and Family Welfare



have been receiving references from various Ministries/Departments regarding the regulation of claims on account of charges of various treatments/examinations undertaken in private hospitals recognized or otherwise under the CS (MA) Rules with reference to charges of Government hospitals for which comparative charges are not available due to the non-availability of such facilities.

2. It has now been decided by this Ministry that the claims for reimbursement of charges of treatment/examinations, etc., for which corresponding rates are not available in the nearest Government hospitals for regulating such claims may be reimbursed without referring them to this Ministry/Directorate General of Health Services by the concerned Ministries/Departments by (a) restricting such claims to the rate of Government hospitals in the concerned State, and (b) where such rates/facilities are not available in the concerned State, full reimbursement of such charges may be made, provided the Director of Health Services of the concerned State certifies to that effect.

[G.I., Min. of Health and Family Welfare, O.M. No. S. 14021/5/88-MS, dated the 17th October, 1988] "

(emphasis supplied)

It is absolutely clear that when rates of government hospitals in the concerned State or when facilities for treatment are not available in the concerned State, full reimbursement of such charges may be made provided the Director of Health Services of the concerned State certifies to that effect.

6. The respondents rely on the Annexure R-1 letter dated 30.08.2005 to deny the reimbursement of doctor's consultation charges. The same is reproduced as under :

"No. MH6 - 73427/05/DHS

Directorate of Health Services,
Thiruvananthapuram,
dated, 30.8.2005.



From

The Director of Health Services.

To

The Administrative Officer,
For Station Engineer,
All India Radio, Calicut - 32.

Sir,

Sub:- Settlement of Medical advance availed by Smt. Elsy
Varghese, Asst. Engineer - reg.

Ref:- No. CLT-10(2) 05-G/4188/dtd. 16.8.05.

Referring to your letter cited, I am to inform you that as per the existing rules the following items are reimbursable. However, Government rates have not been fixed in any of these items.

- | | |
|---------------------|----------------------------|
| 1. Fenal Pakg. | 17. Immunoglobulin profile |
| 2. Serum lipase | 18. DNA PCA |
| 3. Tropolin | 19. Zosyn |
| 4. C. Diffice | 20. Microbiology |
| 5. Radiology | 21. Staincells |
| 6. GGTP | 22. Coagulation Lab |
| 7. Ethicon | 23. CMU Anti Body |
| 8. Alpha Bed | 24. HSV Antibody |
| 9. Beta 2 Micro | 25. Doctors Consultation |
| 10. PTM | not reimbursable. |
| 11. Bone marrow ASP | |
| 12. Immunoserology | |
| 13. Nuclear Bone | |
| 14. Heart and Lung | |
| 15. CBS | |
| 16. Haemmetology | |

Yours faithfully,

Sd/-

For Director of Health Services "

7. The Annexure R-1 shows that doctor's consultation charges are not reimbursable in Kerala. It implies that no rate is fixed by the Government of Kerala for doctor's consultation charges. For the purpose of decision 11(2)(b) of CS(MA) Rules, what is to be noted is that there is no rate prescribed for doctor's consultation. It is not necessary to note that doctor's consultation is not reimbursable in Kerala, because the rates and reimbursement need not always go hand in hand. It is unreasonable to deny the charges for doctor's



consultation in the present case on the ground that Government of Kerala does not reimburse doctor's consultation charges. It is clear that there is no rate fixed for doctor's consultation charges as per Annexure R-1. When rates are not fixed in the Government hospitals in Kerala full reimbursement can be made.

8. In cases, such as the present case, the treatment being special treatment for which facility is not available within the State, the treatment has to be taken as a single event which is more than a sum of all the different procedures involved in it. Otherwise, it would be like missing the wood for the trees. Right diagnosis and right treatment are not possible without right facility which includes the expert doctor. The applicant's husband was wrongly diagnosed and therefore, wrongly treated for Osteoporosis in the absence of right facility in Kerala and he would have lost his life but for the right diagnosis of his illness as multiple myeloma for which the right treatment was bone marrow transplantation, the facility for which was not available in Kerala. Right diagnosis and right treatment were impossible in the absence of the expert doctor in the Apollo Specialist Hospital, Chennai. The applicant's husband was taken to the Apollo Specialty Hospital, Chennai, as the treatment was not available in Kerala, with the consent of the respondents who directly paid to the hospital an amount of Rs. 8 lacs by way of advance. In the circumstances of the present case, the whole treatment at the Apollo Specialty Hospital, Chennai, should also be treated as one single event absolutely necessary for saving the life of the husband of the applicant.

9. Article 21 of the Constitution of India is very heart and soul of the Constitution. It confers on the citizens of India the "Right to Life". Right to life includes right to get medical facilities. It is quite evident that the respondents were all along very sympathetic and co-operative to



the applicant, but they went wrong in making second reference for item-wise rates and in denying reimbursement of doctor's consultation charges because Government of Kerala does not reimburse it. Doctor's consultation is an integral part of the diagnosis and treatment. In the circumstances of the present case, where the amount charged in bill towards doctor's fee is a consolidated charge for diagnostic procedures, confinement, investigations such as Bone Marrow Biopsy, Chemotherapy, Bone Marrow Transplantation etc. which was administered to the patient by the various specialists like Medical oncologist, Haemetologist, Anaesthetist, Cardiologist, Mephrologist, Physician, Surgeon etc. it is not possible to separate the charges for doctor's consultation from other charges.

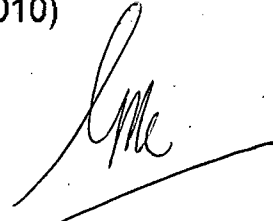
10. Further, most importantly, if the facility for treatment is not available in Kerala, all that is required to satisfy decision 11(2)(b) under Rule 11 of the CS (MA) Rules for reimbursement of full charges is a certificate to that effect from the Director of Health Services, Government of Kerala. In the absence of facility for treatment in Kerala, there is no choice to make whether the treatment should be taken in Kerala or out side. It has to be out side Kerala. If it has to be out side Kerala, the rate fixed or rate not fixed for doctor's consultation or reimbursement or non reimbursement of doctor's consultation charges by the Government of Kerala, has no relevance in reimbursing the expenses incurred out side Kerala. Having got the certificate of non-availability of facility for treatment in Kerala dated 14.12.2001 (Annexure A-1) based on which the respondents deposited the advance amount with the CGHS recognized Apollo Specialist Hospital, Chennai, there was no need to make second reference to the Director of Health Services, Government of Kerala, for item-wise rates, because, for full reimbursement either the condition of the non availability of rates or the non availability of



facility need only be satisfied in terms of decision 11(2)(b) under Rule 11 of CS (MA) Rules.

11. In the result, the O.A. succeeds. The respondents are directed to make full reimbursement of medical expenses for the treatment of applicant's husband at the Apollo Specialty Hospital, Chennai, as evidenced by the bills issued by the hospital, within a period of 30 days from the date of receipt of a copy of this order. No order as to costs.

(Dated, the 08th July, 2010)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

cvt..