

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 202/2007

This the 9th day of September, 2010

Hon'ble Dr. A.K. Mishra, Member(A)

Smt. Kiran Awasthi, Aged about 48 years, W/o late Sri Devendra Kant Awasthi, R/o 418/843, Garhi Peer Khan, Thakurganj, Lucknow.

.....Applicant.

By Advocate: Sri R.C. Singh

Versus

1. Union of India through Secretary, Department of Posts, New Delhi.
2. Ministry of Health & Family Welfare, Government of India, New Delhi through its Secretary.
3. The Chief Postmaster General, U.P. Circle, Lucknow.
4. Senior Post Master, Chowk Post Office, Lucknow.

.....Respondents

By Advocate: Sri G.K. Singh.

ORDER

This Application was filed by the wife of late Sri Devendra Kant Awasthi, who was working as Postman under respondent-department, challenging the rejection of her claim for medical reimbursement of Rs. 3,52,000/- spent on kidney transplantation of her husband and also for a direction to pay this amount alongwith interest @ 18% per annum.

2. Her husband was suffering from Diabetes and was referred by the departmental dispensary to King George Medical College (KGMC), Lucknow. His case was diagnosed as one of the Complete Renal failure (CRA) and was referred to the super-specialist hospital Sanjay Gandhi Post Graduate Institute of Medical Sciences (SGPGI), Lucknow. The SGPGI, Lucknow recommended for kidney transplantation and gave an estimate of Rs. 2.51 lac alongwith the advice to identify a donor from the family willing to donate one kidney. They also suggested dialysis and gave monthly estimates of Rs.

20,000/- which was sanctioned by the department for the first month as advance, but it was not utilized.

3. According to the applicant, her husband sought for advance from the department to undergo kidney transplantation at Ram Saran Das Kishori Lal Charitable Trust Hospital (RKCT Hospital), Amritsar. It is stated that one Sunny Thakur, who was working as a domestic help of the applicant donated one kidney, which was transplanted on the body of late D.K. Awasthi on 21.8.2002, but it was of no avail and the employee died on 19.11.2002. The medical reimbursement claim of the applicant was rejected on 28.10.2005; hence the O.A. The delay in filing the O.A. was condoned by the Tribunal on 8.11.2007.

4. The grounds taken in challenging this decision are as follows:

(i) that the order dated 28.10.2005 is a bald one and non-speaking in nature, it does not reveal the reasons for rejection; (ii) the grounds should have been furnished in the impugned order itself, this could not be supplemented through Counter Affidavit (reliance is placed on the order of Supreme Court in the case of Mohinder Singh Gill Vs. Chief Election Commissioner reported at 1978 1 SCC 405); (iii) the applicant was entitled to get cost of treatment of her husband reimbursed under CCS (Medical Attendance) Rules, 1944; (iv) RKCT Hospital, Amritsar was duly recognized by the State Government of Punjab for kidney transplantation and such recognition was valid till December, 2002; and (v) in view of decision of Hon'ble Supreme Court the Government could not ask an employee to get himself treated at a specific medical Institution recognized by Central Government only.

5. The learned counsel for the respondents has filed Written Arguments in which the claim of the applicant has been described as bogus one, which has been concocted with the help of false affidavits and forged documents. By way of illustrations, the respondents have filed a number of documents alongwith M.A. no. 647 of 2009: one relates to disclaimer of Dr. Rakesh Kumar, whose medical certificate was relied on by the applicant for condonation of delay. Dr. Rakesh Kumar mentions that a line "she has been advised complete bed rest" has been interpolated into the certificate issued by him on 7.2.2006; similarly the correction in respect of date in the certificate dated 12.4.2007 had not been done by him. The Director General of Health

Service, Government of U.P. repudiates in his letter dated 12.1.2009 that the alleged permission granted on 13.8.2002 to late Sri D.K. Awasthi to undergo kidney transplantation outside the State at RKCT Hospital at Amritsar was never issued from his office. In other words, it is now alleged that this document is a forged one which has been filed with fraudulent intention of making a dishonest reimbursement claim of an operation which never took place. He also refers to the letter of SGPGI, Lucknow dated 5.2.2009 in which advice given to late Sri D.K. Awasthi and his nephew has been described in detail. The claim of the applicant that there was mismatch of blood group of his family members is no-where substantiated. On the other hand, it says that after he was advised to start renal replacement therapy on 16.7.2002, the patient never turned up in the hospital. In other words, the plea that the operation could not be made in SGPGI, Lucknow for bonafide reason, is not correct. The learned counsel argues that if the servant of the employee namely Sunny Thakur was selected as a donor in Amritsar, why could he not come forward before SGPGI, Lucknow ? It is further contended that the said Sunny Thakur in his letter dated 22.5.2008 has admitted that he had never donated his kidney to any person and that both of his Kidneyes are still intact in his body. He has stated that he was under pressure of the applicant to give a false affidavit on pain of dire consequences. The competent authority directed for a probe into the veracity of this statement and it was ascertained that the said Sunny Thakur, according to the version of the brother of the deceased employee, was a servant of late D.K. Awasthi and had left their house and his present where-about, were not known.

6. It is further contended that the letter dated 22.7.2002 of the deceased employee was not for permission to take treatment outside at Amritsar, but it was for sanction of financial assistance. It is stated that when the estimate of SGPGI, Lucknow was for Rs. 2.51 lac, it is not understood why the employee went to Amritsar where the estimate as per his application for advance was as high as Rs. 5 lac. It is further stated that the department had sanctioned the first monthly installment of Rs. 20,000/- for kidney dialysis at SGPGI, Lucknow and in view of such sanction, there was no need to go to Amritsar when super-specialty treatment was available at Lucknow itself. The respondents have also placed reliance on guidelines of Central



Government at Paragraph (6) related to Rule 6 of CCS (Medical Attendance) Rules, 1944 (page 45 of Swamy Compilation 2007 edition) which, according to the respondents, prescribes that the hospital situated outside the parent State of the posting of a Central government employee should be fully funded either by the Central Government or by the State Government where such hospital is situated and should also be recognized under Central Government Health Scheme covering 18 cities in India. According to them, RKCT Hospital was not one such hospital. Relying on Rule 6 (4) (ii) of Central Service (Medical Attendance) Rules, it is stated that the bills ought to have been countersigned by the competent authority, but in the instant case the bills produced by the applicant were not countersigned by the competent authority and also that no appeal was made to the Central Government within 45 days from the date of rejection of his claim as prescribed under Rules. It is claimed that according to guidelines of Government of India the bills should have been preferred within 3 months from the date of completion of treatment, which was not followed in this case. Besides, it is argued that, as per rules, all cash memos should have been counter-signed by attending doctor, which has not been done in this case. According to the respondents, there are four recognized Kidney Transplantation Specialist Institutions in the country and the name of RKCT does not find in that list. It is neither recognized by the Central Government, nor is it a completely funded hospital of Punjab Government. On going through the relevant instructions of Government of India conveyed in circular dated 28.3.2000, it is seen that the condition prescribed for an employee to avail of medical facilities in a private hospital is that it should be recognized by the State Government/CGHS/CS (MS) Rules.

7. It is submitted that the husband of the applicant died on 19.11.2002 and the first claim was made by the applicant on 6.12.2004 without explaining satisfactorily the inordinate delay in filing her claim. Although, she received the impugned order dated 28.10.2005, there was no satisfactory explanation why the O.A. was filed after a long gap in the year 2007.

8. The main thrust of his argument is that the claim of the applicant is a concocted one, which has been submitted with fraudulent intention. When the applicant was asked to produce the

donor who is supposed to have donated his kidney for medical examination, she failed to do so. The learned counsel for the respondents finally submits that this is a case which calls for criminal investigation and the department has held its hand in this regard so far because of pendency of this O.A. He highlights the unsavory reputation of Dr. Sareen of RKCT Hospital, Amritsar who is alleged to be the kingpin in a kidney transplantation racket and the fact that he was arrested by the Police on criminal charges. The nefarious activities of Dr. Sareen and his colleagues in RKCT have been extensively covered by the Press. The respondents have filed sensational reports about kidney racket which have appeared in many magazines and Newspapers. In all these articles Dr. P.K. Sareen, chief transplantation surgeon at RKCT Hospital, Amritsar has been described as the villain of the piece and the irregular activities of that hospital have been brought out in lurid details .

9. In reply, learned counsel for the applicant submits that RKCT hospital, Amritsar was recognized by the State of Punjab and the recognition was valid till the end of December, 2002. He placed reliance on Supreme Court's decision in Suman Rakheja Vs. State of Haryana reported at 2004 (13) SCC 562 to say that the Government cannot insist on an employee to get himself treated at recognized Government institution only. The employee had freedom to go any where he was confident about getting proper treatment.

The Supreme Court decision was in the context of a government servant who had to undergo emergency treatment at Apollo hospital, New Delhi. In this case the government servant had to be immediately rushed to Apollo hospital because of a stroke suffered by him. In other words, the government servant was at Delhi and he had to be rushed to Apollo hospital because of urgency and there was no time to take him to AIMS. In the case of Surjit Singh Vs. State of Punjab reported at AIR 1996 SCC 1388 the Supreme Court examined a number of judgments on the subject and endorsed the following proposition which is recorded in paragraph 9 of the judgment:

"9. All the aforementioned judgments of the High Court have a common factual basis, i.e. each recipient of the relief from the high Court had in fact been treated in the



Escorts and had borne expenses. The other common factor is that the High Court believed each writ petitioner pleading emergency to go to Escorts in the given fact situation. But this factor by itself is not the core of the view of the High Court. xxxx

xxxx The respondents appear to have patently used excuses in refusing full reimbursement, when the factum of treatment and the urgency for the same has been accepted by the respondents by reimbursing the petitioner the expenses incurred by him, which he would have incurred in the AIIMs, New Delhi. We cannot lose sight of factual situation in the AIIMS New Delhi i.e. with respect to the number of patients received there for heart problems. In such an urgency one cannot sit at home and think in a cool and calm atmosphere for getting medical treatment at a particular hospital or wait for admission in some Government medical Institute. In such a situation, decision has to be taken forthwith by the person or his attendants if precious life has to be saved.”

It says very clearly that the factum of treatment and the urgency for undertaking the same at a reputed recognized hospital in order to save the precious life have to be recognized.

10. The facts of the present case are entirely different. The applicant was recommended for renal replacement therapy by SGPGI which is a super-specialty hospital located at Lucknow, one of the best of its kind. The applicant's husband was an employee at Lucknow and though such excellent facility was available at SGPGI which was willing to take up the transplantation surgery, and though the cost involved was also comparatively moderate, for strange reasons the applicant's husband never went there and selected an institution which had gained notoriety for its involvement in kidney transplantation racket. He selected a surgeon who had been arrested by the police on criminal charges. Not only the surgeon, but the Chairman and another member of the Authorization Committee were also arrested by Police on criminal charges. The press reports filed by respondent-authorities reveal the following:



(i) Dr. P.K. Sareen had been involved in kidney transplantation racket at RKCT hospital, Amritsar for a very long time. A case was registered against him under Sections 304-A, 383 and 384 of IPC at Amritsar in July, 1995. The grievance Committee of Punjab Assembly appointed Capt. P.S. Shergill to enquire into the complaint against Dr. Sareen and others. Cap. Shergill in his report came to the conclusion that kidney transplantation in a very specific case was made by Dr. Harsharan Kaur and Dr. Sareen in a very negligent manner without proper investigation about the health condition of the donor and he attributed the death of the patient to the negligence of these two doctors to whom he accused of indulging in illegal sale of vital human organs (feature report on 30.1.2002 published in The Tribune); (ii) the racket flourished with the support of the transplantation Authorization Committee, the Principal of Government Medical College Dr. O.P. Mahajan, Dr. Jagdish Gargi the then Professor and head of forensic department who were members of the Committee were also arrested on charges of clearing cases of unrelated donors (vide same report); (iii) forged affidavits were taken from donors and in that connection the involvement of some lawyers were also highlighted. The same report also alleges that the story of the affidavits which have been used in the modus operandi adopted by these doctors is extremely questionable; the language used is as follows:

“I am a domestic servant in the house of so and so for the past 10 years to 12 years. They have taken care of me like a family member and hence I want to donate my kidney to so and so”

Needless to say that the present case also presents a similar picture as the domestic servant in the house of the deceased is said to be the donor and the where-abouts of this donor are not known now.


The name and address of donor is shown as Sunny, S/o Sri Kailash Chandra, R/o 448/117/10 Nagraria, Thakurganj, Chowk, Lucknow. This address incidentally happens to be the address of the deceased employee. Neither the age of donor, nor his full name, nor his permanent address have been indicated in the report prepared by the Authorization Committee. The Chairman as well as member of Authorization Committee, it has been stated earlier, were arrested subsequently on allegation of their involvement in the kidney racket.

(iv) Frontline Magazine makes the following head-notes on an article published on 3.2.2003

“The arrest of three senior doctors and a search of more, bring into focus an exploitative and large scale kidneys-for-cash trade in Punjab, abetted by a conniving system and driven by profiteering professionals. Atleast 30 of the paid donors are dead, but the kidney industry has used sections of the police to suppress the voices of the victim.”

11 The letter dated 13.2.2002 on which reliance has been placed by the applicant in respect of the decision to take the employee to outside the State for kidney operation at Amritsar, was not confirmed by the Director General of Medical & Health Services, U.P., Lucknow. On the other hand, he says that no such letter was issued from his office.

12. The averments of the applicant that SGPGI conducted the tests in respect of family members of the applicant for kidney donation, but as blood group of none of the family members matched with ailing patient and on that ground the SGPGI refused to take up kidney transplantation of the deceased employee is not supported by the version of the SGPGI. Their letter dated 5.2.2009 gives the details: the deceased employee was first examined in Nephrology department on 27.5.2002; he was diagnosed to be suffering from advanced chronic renal failure and was advised renal replacement therapy i.e. dialysis & renal transplantation; the method of dialysis and renal transplantation were explained to him and on his request the estimates of both items were also given to him on 31.5.2002. The patient was last seen in Nephrology OPD on 16.7.2002, he did not come thereafter for follow up. The report in no way says that the SGPGI ever denied the deceased employee to take up renal transplantation; on the other hand he was advised to straight away start dialysis and then go for renal transplantation. As a matter of fact, the department had sanctioned Rs. 20,000/- towards cost of dialysis for one month. Since the deceased employee did not submit himself to dialysis treatment, the advance amount of Rs. 20,000/- sanctioned could not be utilized.



13. The aspects of Medical Attendance and Medical treatment of a central government employee are covered by the provisions of Rules 3 & 6 of Central Government (MA) Rules. Both rules say that a central government employee is entitled, free of charge, to the examination of an authorized Medical Attendant and medical treatment by such hospitals as are mentioned therein. For better understanding, the provisions of these two rules are extracted below:

“3(1) A Government servant shall be entitled, free of charge, to medical attendance by the authorized medical attendant.

(2) Where a government servant is entitled under sub-rule (1), free of charge, to receive medical attendance, any amount paid by him on account of such medical attendance shall, on production of a certificate in writing by the authorized medical attendant in this behalf, be reimbursed to him by the Central Government.

Provided that the controlling officer shall reject any claim if he is not satisfied with its genuineness on facts and circumstances of each case, after giving an opportunity to the claimant of being heard in the matter. While doing so, the controlling officer shall communicate to the claimant the reasons, in brief, for rejecting the claim and the claimant may submit an appeal to the Central Government within a period of forty five days on the date of receipt of the order rejecting the claim.

6 (1) A Government servant shall be entitled, free of charge, to treatment

(a) In such Government hospital at or near the place where he falls ill as can in the opinion of the authorized medical attendant provide the necessary and suitable treatment; or

(b) if there is no such hospital as is referred to in sub-clause (a) in such hospital other than a Government hospital at or near the place as can be in the opinion of the authorized medical attendant, provide the necessary and suitable treatment.

(2) Where a Government servant is entitled under sub-rule (1), free of charge, to treatment in hospital, any amount paid by

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him on account of such treatment shall, on production of a certificate in writing by the authorized medical attendant in this behalf, be reimbursed to him by the Central Government.

Provided that the controlling officer shall reject any claim if he is not satisfied with its genuineness on facts and circumstances of each case, after giving an opportunity to the claimant of being heard in the matter. While doing so, the controlling officer shall communicate to the claimant the reasons, in brief, for rejecting the claim and the claimant may submit an appeal to the Central Government within a period of forty-five days of the date of receipt of the order rejecting the claim."

"Authorized Medical Attendant" has been defined in Rule 2 of the said Rules. Rule 2-a (ii) is applicable in respect of the deceased employee. The departmental Medical Officer referred the case of the deceased employee to KGMC, Lucknow who, in turn, referred his case to the super-specialty Government hospital SGPGI, Lucknow. The Authorized medical Attendant in his case would be the Medical Officer of departmental dispensary or alternatively the Specialist in-charge of Nephrology Department of SGPGI, Lucknow.

14. The applicant is relying on Rule 5 of the Rules to claim that his case was referred by the Authorized Medical Attendant to RKCT Hospital, Amritsar for kidney transplantation operation. It is not understood how the Director General of Health & Medical Services, U.P. Government, Lucknow became the authorized Medical Attendant for the deceased employee. As per the definition, it is the Medical Officer of the departmental dispensary who could be designated as the Authorized Medical Attendant, when his case was referred to KGMG, Lucknow and thereafter on their recommendations to SGPGI, Lucknow, the Specialist in Nephrology department of SGPGI, Lucknow could be legitimately declared as the Authorized Medical Attendant. In any case, the Director General of Health & Medical Services, U.P. Government, Lucknow has disclaimed to have issued any authorization in favour of deceased employee. Therefore, the claim of the applicant that the deceased employee was sent to RKCT hospital, Amritsar on the recommendations of Authorized Medical Attendant, as per provisions of Rule 5, is not established.



Further, it is seen that Rule 5 deals with the contingency in which the Authorized Medical Attendant can send the patient to the nearest specialist or other Medical Officer by whom in his own opinion the Medical attendance is required. This rule was followed in sending the employee to SGPGI, Lucknow which was nearest to the patient's locality. It does not permit sending him to a far away place like Amritsar.

Appropriate instructions on this subject, however, were issued by the Ministry of Health & Family Welfare in its OM. Dated 18/29.7.1960. These instructions are covered in paragraph 4 at page 43 of Swamy Compilation of 2007 edition.

"4. Conditions for treatment in hospitals outside District/State- It has been decided that Central Government servants and members of their families may receive treatment for all diseases (other than TB cancer, Polio and Mental disease for which separate orders exist) for which treatment is provided under the rules, in a Government/ recognized hospital outside the District/State but within India, provided -

- (i) necessary and suitable facilities for treatment are not available in a Government or recognized hospital at the District or State Head quarters or within the District or State where one falls ill; and
- (ii) the treatment outside the District/State is recommended by the Authorized Medical Attendant and countersigned by the Chief Medical Officer of the District if the treatment to be undertaken outside the district or by the Chief Administrative Medical Officer of the State if it is to be undertaken outside the State."

It is clear that the condition precedent for such treatment should be that suitable facilities are not available within the State and further that the case should be recommended by the Authorized Medical Attendant and countersigned by the Chief Administrative Medical Officer. In this case, neither the Authorized Medical Attendant recommended the case, nor Director General of Health & Family Welfare, U.P. Government certified the course of action taken by the deceased employee.

15. Now, coming to the allegation that the rejection of the claim is not a speaking order supported by detailed reasoning, let us examine the language of the impugned order. It says that the case of the deceased employee was sympathetically considered in consultation with the Ministry of Health & Family Welfare and was not found admissible as per rules. No mention has been made as to how the claim was declared as not being in accordance with rules. Subsequently, in the Supplementary Counter Affidavit, a copy of letter dated 16.8.2005 of Department of Posts has been enclosed. It says that the matter was referred to the Ministry of Health & Family Welfare and it was observed by the Ministry that renal transplantation was not an emergency treatment, but an elective surgery; it required a large number of investigations both for the donor as well as recipient and till then the patient could be well maintained on dialytic support which was also alternative treatment for renal transplantation.

16. I find that SGPGI, Lucknow had made almost similar recommendations. They have given the monthly estimate for dialysis as well as the estimated cost for renal transplantation. The department had infact sanctioned the advance for the cost of dialysis for the first month. Instead of taking up dialysis on top priority and simultaneously arranging for detailed investigation both of donor as well as the patient, the deceased employee wasted precious time and got mixed up with the Hospital at Amritsar leading to fatal result.

17. No-doubt, RKCT Hospital, Amritsar was recognized by State of Punjab till November, 2002, but that does not adequately explain why the patient should have gone to that hospital in preference to excellent facilities available at Lucknow itself, neither was there any emergency, nor such a situation had developed which left the deceased employee with no other alternative, but to go to RKCT hospital, Amritsar, nor is there any recommendation of the Authorized Medical Attendant asking him to go to RKCT Hospital.

18. Although the allegation that the impugned order has not given detailed reasons in support of rejection of the claim and has also not *intimated the reasoning of Ministry of Health & Family Welfare*, which



prompted them to disallow the claim, cannot be brushed aside, yet no useful purpose would be served by remanding the case to the competent respondent-authority to go through the exercise again after giving an opportunity to the applicant in view of the fact that merits of the claims have been examined exhaustively in the preceding paragraphs.

19. The rival contentions have been discussed elaborately and it has been established that the claims of the applicant are not supported by the Rules:

- (i) there was no emergency for the employee to go to a far off place ignoring the facilities at SGPGI, Lucknow;
- (ii) there was no recommendation of the Authorized Medical Attendant for such a course of action, nor was it certified by the competent authority, neither was there any permission from the controlling authority.
- (iii) donation of vital human organs for monetary transactions are against law, but no justification for donation of kidney by a servant who has disappeared into thin air thereafter is forthcoming; neither is there evidence to suggest that there was no matching of blood group of near relatives.
- (iv) the claims have been preferred after inordinate delay, though the guidelines suggest that they should have been made within 3 months of the treatment.

In the circumstances, it is held that the claims of the applicant made in the O.A are not established; the O.A. is accordingly dismissed.

However, since the respondent-authorities have alleged forgery of documents, making of fraudulent claims, it would be desirable on their part to go for a detailed probe into the allegations which have been made in their many Counter Affidavits filed before this Tribunal. No costs.


 (Dr. A.K. Mishra)
 Member-A