

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA No. 380 of 2006**

Date of order : ^{1st February}
January, 2008

C O R A M

Hon'ble Mr. Amit Kushari, Member[Admin.]

Jagdish Chandra Roy, S/o Sri Baleshwar Roy, resident of Mohalla –
Aadarsh Coloney, P.O. - P.S. - Samastipur, District – Samastipur.

.....
Applicant

Vrs.

1. The Union of India through the Secretary cum Director General, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Engineer [C], North East Zone, Department of Posts, Dak Bhawan, New Delhi.
3. The Chief Postmaster General, Bihar Circle, Patna.
4. The Superintending Engineer [C], Postal Civil Circle, Patna.

.....
Respondents.

Counsel for the applicant : Shri J.K.Kam

Counsel for the respondents : Shri G.K.Agarwal, ASC

O R D E R

Amit Kushari, Member[A] :-

The applicant was employed as Superintending Engineer [Civil] in

In

the office of Chief Postmaster General, Bihar Circle, Patna and during the period December, 2003 to June, 2004 fell seriously ill which ultimately led to transplantation of kidneys. From December, 2003, he was taking treatment in Indira Gandhi Institute of Medical Science [in short I.G.I.M.S.], Patna duly recommended by the C.G.H.S., Patna. The doctors including specialists & Nephrologists could not properly diagnose his illness and they were treating him with routine medicines. They could not diagnose that the applicant was suffering from total kidney failure and that he required kidney transplantation immediately. From the mid-night of 10th April, 2004, his conditions suddenly deteriorated and unfortunately 11th April, was a Sunday and the CGHS dispensaries were closed. Therefore, he could not contact the CGHS doctors. His son and near relatives did not want to take any chance by giving him further treatment in a hospital in Bihar since they felt that the hospitals of Bihar are notorious for being sub-standard, ill equipped and unreliable. His relatives, therefore, air lifted him to Ahmedabad and got him admitted in Apollo Hospital, Ahmedabad on the same day itself i.e. 11th April, 2004. The Apollo Hospital, Ahmedabad was given priority over the hospitals in Delhi or Kolkata because the son of the applicant resides in Ahmedabad where he could get better care – although Ahmedabad is geographically quite far

Re.

away from Patna. In Apollo Hospital, Ahmedabad he was immediately diagnosed as suffering from chronic renal failure and because of immediate treatment at the hospital and by the grace of God his life was saved.

2. Shri J.K.Kam, Id. counsel for the applicant points out that this was a case of real emergency and if the applicant had not been air lifted to Ahmedabad on the same day and was sent to a hospital of Bihar State, he would have surely perished. The applicant thereafter returned to Patna and took dialysis treatment at Ruben Memorial Hospital, Patna which is a private hospital though it is recognized by the C.G.H.S. There he incurred an expenditure of Rs. 24,346/-. At Apollo Hospital, Adhedabad he had incurred expenditure approximately Rs. 36,000/- including indoor and outdoor treatment.

3. Shri G.K. Agarwal, Id. ASC for the respondents drew my attention to the speaking order which has been issued by the Chief Engineer, N.E. Zone, New Delhi on this subject which clearly explains why the expenditures incurred at Apollo Hospital, Ahmedabad and Ruben Memorial Hospital, Patna had been dis-allowed. He points out that in emergent cases involving accidents, serious nature of diseases etc. a patient could be given treatment in a private hospital in case no Govt. or CGHS recognized

fu

hospital is available nearer than the private hospital. In the speaking order, the Chief Engineer has explained -

"In this case, treatment has been taken at a private hospital in Ahmedabad 1500 Km. Away bypassing all the Govt. And recognized hospitals and private hospitals available in Patna/Bihar although his conditions had deteriorated on 10.4.2004, but treatment was taken only on 12.4.2004, why immediate treatment was not taken in Patna and in this case no doctor of CGHS/Govt. Hospital/Private Hospital at Patna was even consulted for taking immediate emergent treatment and for going to Ahmedabad which is 1500 Km. Away. Keeping the above in view it is quite clear that this was not a case of emergency. Hence the bills are disallowed."

4. Treatment at Ruben Memorial Hospital at Patna was also not allowed by the Chief Engineer because he had not taken permission of CGHS for going there. Rather CGHS had referred him to I.G.I.M.S., Patna. Under Rules the patient could have taken treatment in CGHS recognized private hospital at Patna provided he got his case referred by the CGHS. The applicant was referred to IGIMS, Patna but earlier since he had already a bitter experience about the doctors of IGIMS, therefore, he reported directly to Ruben Memorial Hospital for taking dialysis. On this ground, the amount incurred by him at Ruben Memorial Hospital which is Rs.24,346/- was disallowed.

Au

5. Shri J.K.Karn, ld. counsel for the applicant points out that the argument of Chief Engineer that the case was not a case of emergency is totally wrong. The fact that he was suffering from chronic renal failure and that he had to go for kidney transplantation itself shows that it was a case of grave emergency and that had he not taken treatment in a good hospital out-side Bihar, he could have died. The fact that he had been shifted by air 1500 Km. away, has no relevance since, he has not claimed any air fare for travel from Patna to Ahmedabad. The ld. counsel for the applicant also draws my attention to a judgment of the Principal Bench of Central Administrative Tribunal in the case of Dr. M.A. Haque vs. Union of India & Ors. in which the Central Administrative Tribunal, Delhi had allowed reimbursement in a case where a patient under took treatment in a private hospital for saving his life. The Principal Bench, CAT has observed as follows : -

"Right to life is paramount under Article 21 of the Constitution of India. Government as a welfare employer cannot be absolved of their obligation to grant medical reimbursement in the light of the scheme framed. The package rates and inclusion of the cost of medicines etc. has been a subject matter before the High Court in J.K. Saxena [supra] where full medical reimbursement has been accorded. Ministry of Health and Family welfare despite several

an

decisions of the High Court having failed to implement the directions by issuing an administrative order vide OM and their endeavor to challenge them by way of SLP, being a legal right bestowed upon, would not absolve them from complying with the directions. Applicant, who is similarly circumstanced is certainly entitled to extension of the benefit of the decision in J.K. Saxena [supra] the Apex Court even in a case of non-recognized and non approved CGHS hospital, in case of emergency, accorded full reimbursement to the extent stated therein, applicant herein cannot be denied full reimbursement on that count alone.

In the result, for the foregoing reasons, O.A. is allowed. Respondents are directed to reimburse to applicant the remaining amount in the context of his claim of Rs. 1,59,412/- within one month from the date of receipt of a copy of this order."

6. The ld. counsel for the applicant points out that the judgement of Hon'ble Apex Court in the case of Suman Rakheja vs. State of Haryana and another and the order of Delhi High Court in J.K. Saxena vs. U.O.I. cannot be over-looked and full medical reimbursement should be admissible in this case also. He also points out that in O.A. No. 330 of 2002 [Raj Kishore Choudhary vs. Union of India & Ors.] , Patna Bench of the Central Administrative Tribunal vide its order dated 4.12.2002 had allowed full medical reimbursement of expenditure incurred in a private hospital and on

fu

the similar lines this O.A. should also be allowed.

7. I have carefully gone through the speaking order issued by the chief Engineer, N.E. Zone, New Delhi. The arguments of the Chief Engineer for rejecting the medical claims of the applicant for incurring treatment at Apollo Hospital, Ahmedabad could not impress me. It is really shocking that since December, 2003 right upto 10th April, 2004, the doctors of IGIMS, Patna could not correctly diagnose the disease of the applicant. The fact that his family members had to air lift him to Ahmedabad where his son stays – is quite a natural development and I cannot find any fault with this action of the applicant. The fact that 11th April, 2004 was a Sunday has to be noted which unfortunately escaped the notice of the Chief Engineer while issuing the speaking order. On Sunday how could he get a reference from a CGHS doctor since all the CGHS dispensaries are shut on Sunday. A delay of 24 hours could have proved fatal for the applicant and obviously he could not wait for a formal reference of the CGHS authorities. True, he could have gone to some other private hospital nearer to Bihar but this is immaterial for the respondents because he has not claimed any air fare for Ahmedabad. The applicant had obviously gone to Ahmedabad, ^{as} ~~and~~ he had some infrastructural facilities in Ahmedabad, hence he cannot be blamed for that. However, theoretically it

hu

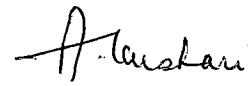
can be argued that he could have gone to New Delhi where very good Govt. hospital facilities are available and perhaps the charges could have been slightly lower. I am of the opinion that all the expenditure incurred by the applicant at Apollo Hospital, Ahmedabad should be reimbursed to him within a ceiling of the expenditure that would have been admissible if the treatment had been taken at All India Institute of Medical Science, New Delhi. The respondents are, therefore, directed to find out what would be the cost of this treatment if the same treatment was taken at AIIMS, Delhi and this amount ^{if lower than actual expenses} should be reimbursed to the applicant for the treatment taken by him at Ahmedabad.

8. Regarding the expenditure incurred by the applicant at Ruben Memorial Hospital, Patna, I am of the view that the applicant should not have been so much scared at the prospect of going to IGIMS. If indeed he was so scared he could have requested the CGHS authorities for referring him to Ruben Memorial Hospital – which surely they would have done since Ruben Memorial Hospital is a recognized hospital and if a patient wants treatment in a CGHS recognized Hospital, the CGHS authorities usually do not refuse and the expenditure incurred in those recognized hospitals are reimbursed to the extent of certain recognized ceilings. The action of the applicant in this matter, therefore, cannot be fully supported.

for .

However, it cannot be denied that since the applicant was in a state of mental shock after under going prolonged treatment and, therefore, perhaps he did not get the correct advice at that moment. I, therefore, direct the respondents to reimburse the expenditure incurred by the applicant at Ruben Memorial Hospital, Patna to the tune of 75 per cent.

9. In the result, this O.A. is partly allowed on the lines indicated in this order. All the reimbursements that have been allowed in this O.A. should be paid to the applicant within three months of the receipt of a copy of this order. No costs.


[Amit Kushari]
Member [Admn.]

mps.