

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1015/96

Date of Decision: 29-04-97.

Dr.G.P.Srivastava

.. Applicant

Shri S.P.Saxena

.. Advocate for
Applicant

-versus-

U.O.I. & Ors.

.. Respondent(s)

Shri V.G.Rege

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri M.R.Kolhatkar, Member(A)

The Hon'ble

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to
other Benches of the Tribunal ? X

M.

M.R.Kolhatkar
(M.R.KOLHATKAR)
M(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.1015/96

Pronounced this the 24th day of April 1997

Coram: HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Dr.G.P.Srivastava,
Flat No.1,
Paya Housing Society,
Aundh, Poona 411 007

By Advocate Shri S.P.Saxena

.. Applicant

-versus-

1. The Union of India
through
The Secretary,
Ministry of Health & Family Welfare,
(Department of Health)
Govt. of India,
New Delhi - 110 011.
2. The Additional Deputy Director
General,
(GHS) (HQ), Directorate General
of Health Services, Nirman Bhavan,
New Delhi - 110 011.
3. The Additional Director,
Central Govt. Health Scheme,
Swasthya Sadan, 2nd Floor,
Mukundnagar, Poona 411 037.
4. The Medical Superintendent,
Ruby Hall Clinic,
Poona Medical Foundation,
40, Sassoon Road,
Poona 411 001.

By counsel Shri V.G.Rege

.. Respondents

-: O R D E R :-

(Per M.R.Kolhatkar, Member(A))

The applicant is a central government pensioner entitled for medical cover/facilities under the CGHS. He suffered a heart attack on 7-4-1995 early morning and he was taken to the hospital of respondent No.4, Ruby Hall Clinic, Poona Medical Foundation, which is one of the recognised private hospitals for CGHS patients at Pune. The applicant was subjected to Angiography test on 11-4-1995 and in the light thereof angioplasty was recommended. While doing the Angioplasty there were complications necessitating

...2/-

by-pass surgery. The same was carried out. It is contended by the applicant that although according to the agreement of the package deal between official respondents and respondent No.4 the pensioner is not required to pay towards the investigations/treatment respondent No.4 recovered Rs.1,07,885/- from the applicant. The applicant was discharged on 20-4-1995. Thereafter the applicant made representation for reimbursement of amount for Angiography directly recovered by R.No.4. When the applicant took up the matter with the official respondents he was sanctioned an amount of Rs.67,542/- vide Ex.A-1 communication dt. 30-5-1996 covering Rs.60,000/- for Angioplasty and Rs.7,542/- towards cost of Medicines. Regarding the balance amount it was stated that the same is required to be borne by the beneficiaries themselves as per the instructions. The applicant has therefore sought the relief of payment of balance amount of Rs.40,343/- and also payment of interest on the amount of Rs.67,542/- @ 12% p.a. and on the amount of Rs.40,343/- from 30-6-1995 till this amount is paid to the applicant.

2. The official respondents have opposed the O.A. According to them the applicant had undergone both Angioplasty and by-pass surgery at the approved hospital. As per the O.M. No. S-12015/1/91-CGHS dt. 21-10-1991 it is stated as below :

"The undersigned is directed to say that several hospitals are recognised under CGHS for coronary Angiography and by-pass surgery.

In a large number of cases where permission is given for Angiography and by-pass surgery, Angioplasty is being done. Angioplasty is almost as costly as by-pass surgery and a

large number of CGHS beneficiaries undergoing angioplasty have to undergo by-pass surgery eventually.

It has been decided that a beneficiary may be reimbursed only for one of the procedures i.e. angioplasty or by-pass surgery as per choice of the beneficiary. In case a beneficiary has already undergone angioplasty at the expense of CGHS, he will not be eligible for CGHS benefits for by-pass surgery."

Thus according to respondents as per the Govt. instructions the applicant was entitled for reimbursement only in respect of either angioplasty or by-pass surgery. The applicant had undergone both the operations. The department had separately settled the claim of the hospital authority for an amount of Rs.1,00,200/- towards Angiography and by-pass surgery. In terms of instruction dt. 21-10-1991 referred to above the applicant was not at all entitled to any reimbursement on account of Angioplasty operation undergone by him for which the hospital recovered Rs.1,07,885/- from him. The department in relaxation of the instructions dt. 21-10-1991 inspite of having reimbursed the hospital to the extent of Rs. 1,00,200/- on account of Angiography and by-pass surgery also reimbursed the applicant to the maximum extent on account of Angioplasty. In accordance with the Govt. instruction dt. 11-3-93 Ex.A-3 the ceilings prescribed are not to be exceeded and it is also pointed out that Govt. of India has now made it possible to withdraw money from GP Fund of the employee for the purpose of medical treatment. Therefore any question of reimbursing the balance amount in respect of Angioplasty operation does not arise.

3. The applicant has contended in his representations that full reimbursement to one Mr. Dubey in respect of both such operations was permitted. No further particulars in respect of this case were furnished by the applicant. The applicant, however, relied on certain judgments of the Tribunal and the Supreme Court.

4. So far as respondent No. 4^{are} concerned they have filed a written statement in which they have taken ^{the} stand that the applicant was advised to undergo angioplasty and since hospital charges are not covered under CGHS the same ^{were} recovered from the applicant.

5. Regarding the judgment relied upon by the applicant the first judgment is of the Jabalpur Bench of the CAT in N.M. Rokde vs. U.O.I. decided on 25-3-1996, reported at 1996(2)ATJ 16 in which the facts were that the applicant had undergone a heart operation at Apollo Hospital for which he was charged Rs. 84,074/- The respondents, however, limited the sanction only to Rs. 57,000/- and the dispute was regarding reimbursement of the balance amount of Rs. 27,074/- The Tribunal relied on the judgment of the Supreme Court in the case of Surjit Singh vs. State of Punjab & Ors. 1996(1)SCALE 648 ^{and} directed sanction of the balance amount of Rs. 27,074/-

6. Next the applicant relies on the case decided by the Bombay Bench of the CAT in O.A. 135/90 decided on 16-6-1995 in N.B. Rao vs. U.O.I. That was a case in which the applicant was required to undergo an emergency treatment in a private hospital which was not approved. The Tribunal ^{on} relied ^{on} Supreme Court judgment in Pt. Parmanand

Katara vs. U.O.I. & Ors. AIR 1989 SC 2039
to the effect that preservation of human life
is of paramount importance and directed the
respondents to pay full amount of charges of
treatment along with interest of 10%.

7. The applicant also relies on the
judgment of the Supreme Court in Surjit Singh
vs. State of Punjab & Ors., JT 1996(2)SC 28
decided on 31-1-1996. The head note of the same
reads as below :

"Reimbursement of medical expenses in
respect of open heart surgery -
Appellant, ailing with heart disease,
while in London during his visit to his
son residing there, had to undergo an
emergency operation - Escorts Heart
Institute recognised for treatment-
Held that had the appellant remained
in India, he could have gone to the
Escorts like many others did, to save
his life and that it is fair and just
that the respondents pay to the appellant,
the rates admissible as per Escorts."

8. The applicant also relies on the Supreme
Court judgment in the case of State of Punjab &
Ors. vs. Mohinder Singh Chawla etc. JT 1997(1)SC 416.
The head note of the same reads as below :

"Medical reimbursement to Govt. servants
or retired Govt. servants - Held that
policy decision of 1991 of State Govt.
refusing re-imburement of diet, stay
of attendant or stay of patient in
hospital/hotel is not approved - Expenses
incurred towards room rent for stay in
hospital are an integral part for treatment
to Govt. servant - High Court held to be
right in re-imbursing expenses towards
room as in -patient - Contention of State
Govt. refusing inpatient charges for heart
treatment in Escorts Hospital and/or
SIMS rejected- Govt's constitutional
obligation to reimburse the expenses.

Right to health is integral to right to life and Govt. has constitutional obligation to provide the health facilities to its servants or retired servants - Where employee requiring specialised treatment in an approved hospital, duty of Govt. is to bear or re-imburse expenses."

9. In the context of these judgments the counsel for the applicant has submitted that the Tribunal should consider the implications of the package deal with the approved hospital. When there is an agreement between private approved hospital and the CGHS then it is not open to the Govt. to restrict the reimbursement to an arbitrary figure fixed without reference to the actual charges recovered by the private hospital from the CGHS. The reference to eligibility of the Govt. employee to the advance of provident fund is of no avail even in respect of a serving Govt. employee because the provident fund balance belongs to Govt. employee and so far as pensioner is concerned the question of provident fund balance does not arise. On the other hand the respondent would contend that respondents have already gone out of the way by reimbursing the charges for Angioplasty even though the Govt. instructions dt. 21-10-1991 vide para 2 *supra* envisage that the charges for Angioplasty or by-pass surgery alone are admissible. The question of applicant being given balance amount in respect of Angioplasty does not arise. In my view, relaxation of the instructions dt. 21-10-91 is in order since the applicant was on the operation table and the decision as to the procedure was taken by the doctors in the best clinical judgment.

10. The authorities cited before me do, moreover, indicate that the courts and Tribunals would not accept arbitrary ceilings or arbitrary disallowance of the actual expenditure. Thus in the case of Rokade

decided by Jabalpur Bench, the full amount charged by private approved hospital was directed to be reimbursed to the applicant irrespective of the ceiling. The judgment in State of Punjab v. Mohinder Singh Ghawla is also of greater relevance in this connection. In that case an amount of Rs.20,000/- paid as room rent for staying in the hospital was disallowed by the Govt. and the Supreme Court intervened. In the instant case amount to the extent of Rs.67,542/- has been fully reimbursed. From the bill produced at page 18 and 19 of the OA it appears that balance amount is entirely on account of expenses of operation. This amount has been arbitrarily restricted to Rs.60,000/- by the respondents on the ground that this is the maximum which is permissible.

11. The authorities cited before me show that even the room rent cannot be denied to the Govt. servant. The action of arbitrary restriction of amount on account of operation therefore can be supported even less in terms of the authorities cited before me.

12. In this connection I would also like to observe that private hospitals increase the rates in connection with the investigations and operations from time to time. The Governmental authority however do not revise the prescribed/permissible rates taking account of the revision made by the private approved hospital. A great discrepancy arises between the amounts actually charged by the approved private hospital and the amounts reimbursed to the beneficiary. It could be understood that if Govt. decides that out of the total amount charged by the private approved hospital a reasonable percentage, let us say 10%, may be

borne by ^{the} ~~beneficiary~~ and the balance alone would be reimbursed by the Govt. But the Govt. orders do not lay down any such reasonable prescription. A situation therefore could arise ~~where a paltry~~ portion may be reimbursed which is less than 50% of the expenditure incurred by ~~a beneficiary~~. This cannot be ~~said to be~~ reasonable.

13. There may be budgetary constraints and in fact the budgetary constraints were pleaded in the case of State of Punjab & Ors. v. Mohinder Singh Chawla. To this Hon'ble Supreme Court countered as below vide para 5 of the judgment.

"The learned counsel then contends that the State would be saddled with needless heavy burden, while other general patients would not be able to get the similar treatment. We appreciate the stand taken that greater allocation requires to be made to the general patients but unfortunately due attention for proper maintenance and treatment in Government Hospitals is not being prevented. Having had the constitutional obligation to bear the expenses for the Government servant while in service or after retirement from service, as per the policy of the Government, the government is required to fulfill the constitutional obligation. Necessarily, the State has to bear the expenses incurred in that behalf"

14. In view of the above discussion the O.A. succeeds. The respondents are directed to reimburse to the applicant ^{the balance} amount of Rs.40,343/- being the ^{of the amount} difference ~~actually~~ paid by him to the hospital and ~~xxxxxx~~ the amount reimbursed ~~to him by the CGHS~~

authorities. In the circumstance of the case

I am not inclined to grant interest. There will be
no order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

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Date : Office Report :

Orders

c.p. no. 57/97
 filed by applicant
 heard on 15/9/97

3
 1918

Per Tribunal

Date:

Mr. Saxena

Ap. A. and B. Bench/1st

Advisory Committee/1st

Court of Appeal/1st

The Minister of Justice to

Federal Court of Canada/1st

Est. 1918

C. 57/97

Dated: 3/10/97 (20)

Heard MS. Goddard for Sh. S. P. Saxena
 for the applicant.

Issue notice to the Respondents
 to file their reply on C.P.

Adjourned to 10/11/97.

(14)

M. R. Kolhatkar

(M. R. Kolhatkar)
 MCA.

B. S. Hegde
 (B. S. Hegde)
 MCA.

Notices issued to
 Appellants/Respondents on

20/10/97

20/10/97