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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
MUMBAI

REVIEW PETITION NO. 40/96 IN O.A. 541/94

Signed this, the 4th day of APRIL 1996

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

Gulamnabi Maheub Shaikh

.. Review Petitioner

-versus-

Union of India & Ors.

.. Respondents

ORDER (BY CIRCULATION)
(Per M.R.Kolhatkar, Member(A))

In this Review Petition the review petitioner - original applicant has sought review of my judgment dt. 7-9-95 which had partly allowed the O.A. but has rejected the claim of the applicant in respect of medical charges in connection with treatment of his wife in a non recognised hospital.

2. The main contention of the applicant in the review petition is that when there is a major surgery for survival at both recognised and unrecognised hospital and the treatment therein cannot be distinguished for the purpose of medical reimbursement. He also states that N.B.Rao's case and the Supreme Court observations in Parmanand Katara's case is fully applicable to his case and therefore that part of the judgment which rejected his claim for medical reimbursement needs review.

3. I have considered the prayers. Whatever has been settled by N.B.Rao's judgment has been considered by me in my judgment. The main ground for review appears to be that the applicant's wife had faith in the doctors at Hinduja Hospital which

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as per applicant is the most important factor for survival and recovery in post operational recovery of patient in a most complicated and critical operation of replacement of heart valve and that for subsequent treatment after some years, applicant's wife was moved in emergency to Nanavati Hospital which is a recognised hospital, however, she could not survive the attack there and lost her life. This subjective consideration cannot be determine the claim for reimbursement especially when there is nothing on record to show that it was not possible for the applicant to admit his wife for treatment at Nanavati Hospital, a recognised hospital, rather than to Hinduja Hospital a non recognised hospital.

4. The scope of review jurisdiction is limited. No grounds have been made out in R.P. relatable to rules under order 47 of CPC. The R.P. has, therefore, no merit and is dismissed by circulation as is permissible under rules.

order 4/4/96 despatched
to respondent (s)
on 23/4/96

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

23/4/96

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

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Original Application No: 541/94

Transfar Application No: ---

DATE OF DECISION: 7-9-95

Gulamnabi Mahebub Shaikh

Petitioner

Applicant in person

Advocate for the Petitioners

Versus

U.O.I. & Ors.

Respondent

Mr. Suresh Kumar

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri ---

1. To be referred to the Reporter or not ? ✓
2. Whether it needs to be circulated to other Benches of X the Tribunal ?

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

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.541/94

Gulamnabi Maheebub Shaikh,
C-14, Neelkamal, S.V.Road,
Dahisar(E),
Bombay - 400 068.

.. Applicant

-VS-

1. Union of India
through
Director General,
Employees' State Insurance
Corporation,
Panchdeep Bhavan,
Headquarters Office,
Kotla Road,
New Delhi.

2. The Director General,
Employees' State Insurance
Corpn.,
Panchdeep Bhavan,
Headquarters Office,
Kotla Road,
New Delhi.

3. The Chairman,
Standing Committee,
Employees' State
Insurance Corpn.,
Panchdeep Bhavan,
Headquarters Office,
Kotla Road,
New Delhi.

.. Respondents

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

Appearances:

1. Applicant in person.
2. Mr.Sureshkumar
Counsel for the
Respondents.

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

Date: 7-9-95

In this O.A. the applicant has asked the relief of reimbursement of two medical bills for Rs.72,531/- with interest @ 21% from the date of application viz. 26-7-1991. The details of the bills are given at Annexure 'A' to the application which are extracted below:

"Total Bill

1. Rs.9,730.80
(In-patient
treatment in
Nanavati Hospital

Accounts disallowed

Rs.5114/- (including surcharge
of Rs.1201.65 @ 15%)

from 17-8-88 to
22-8-88)

The matter was referred to Hqrs. office and Hqrs. office had intimated to regularise this bill on the same lines as was done in case of Shri P.S.Raman, J.R.D. But the Dy.C.A.O here did not accept Hqrs. office orders and hence the claim is again referred to Hqrs. office by C.R.I. Br. and it is still lying in Hqrs.

2. Rs. 2099/-
(In patient treatment in Nanavati Hosp. 29-11-89 to 5-12-89 for heart treatment).

This Bill has since been settled and not therefore pressed.

3. Bill amount

Rs. 67,417/-
(Valve replacement Heart Operation in National Hospital In patient treatment from 20-4-90 to 4-5-90)

Bill submitted to C.R.I. Br. on 13-6-90. But so far nothing has been done. "

Note: Although the applicant states in O.A. that nothing has been done, subsequently it is admitted that an ex-gratia payment of Rs. 15,166/- has been made against the bill.

2. The applicant was working as Deputy Regional Director in the E.S.I. Corporation since 1988 and retired on 29-2-1992. It is an admitted position that applicant held the charge of C.R.I. Section which deals with the medical reimbursement from 8-6-89 to 18-6-90. It would also be seen that the claim is in respect of two items of treatment. One is in respect of the applicant and the other is in respect of the wife of the applicant; treatment for self was taken during 1988 and 1990 and one of the issues relates to recognition of the hospital in which

his wife was treated; we may, therefore, deal with these aspects of the case separately.

So far as the treatment taken by the applicant in Nanavati Hospital is concerned, it is not in dispute that Nanavati Hospital is a recognised hospital and an amount of Rs.5,114/- has been disallowed by the respondents. Respondents state that a reference was made to the headquarters to sanction an additional amount within the power of Headquarters to which a reply was received on 10-9-90 and a further reference was made on 5-11-90 to which a reply is still awaited. The contention of the applicant is that it was within the powers of the regional office to settle the bills and the regional office could have settled the bills as is done in the case of one P.S.Raman, the then Joint Regional Director but they chose not to do so.

According to respondents, reference to P.S.Raman's case is quite irrelevant and not applicable to this case. It is not disputed that as against an amount of Rs.9,732.65 claimed by the applicant according to own calculations of the respondents, the head quarters could sanction an additional amount of Rs.5,114.60 and taking account of an amount of Rs.4,480.25 already released to the applicant a total of Rs.9594.85 could be ^{sanctioned} leaving a small balance of Rs.2,000/- It was not clear as to why the matter has remained pending for so long and if the headquarters does have powers as perceived by the regional office to sanction an additional amount, why the headquarters has not done so far even after a lapse of four years. Since there is no dispute that the Nanavati Hospital is a recognised hospital and there is also no dispute that the

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claim of Shri P.S.Raman, Joint Regional Director was settled in a similar manner there is no reason why there should be discrimination against the applicant. We are, therefore, of the view that applicant is entitled to have the sanction of additional amount of Rs.5,114.60 which is within the powers of the headquarters along with appropriate interest.

3. So far as the claim of the applicant for reimbursement of Rs.67,417/- is concerned it is the contention of the applicant that P.D.Hinduja National Hospital is a recognised hospital and a formal communication regarding its de-recognition has not been received by the respondents. In any case according to the applicant the respondents are not bound by the de-recognition by the CGHS because any decision by the CGHS is first required to be adopted by the Standing Committee of the ESIC and unless it is so adopted the respondents are bound to treat Hinduja Hospital as recognised hospital and settle his bill.

4. Respondents, on the other hand, states that P.D.Hinduja National Hospital is derecognised w.e.f. 1-4-90. In this connection this Court had issued directions to the CGHS to produce the relevant circular and they have produced the same vide their letter dated 14-7-95 addressed to the Registrar. From this letter it is clear that by letter No.S.11011/48/86-CGHS.D.II/CGHS(P) dt. 25-3-1988 P.D.Hinduja National Hospital stands de-recognised under CGHS w.e.f. 1-4-88 and the Dy. Director, CGHS ^{Bombay} has also been advised about this. We, therefore, come to the question as to whether this fact of de-recognition was within the knowledge of the applicant. The respondents

pointed out that there was correspondence in this regard vide letters dated 18-1-1990, vide Ex.III, attached to the written statement and 23-1-1990 vide Ex.I attached to the written statement. Both these letters are under the signature of the applicant in his official capacity and it clearly indicates that applicant ^{was aware that} CGHS has withdrawn the recognition of P.D.Hinduja National Hospital w.e.f. 1-4-88. On this point the Headquarters wrote a letter dt. 9-4-1990, Ex.II directing the Regional Director that he should issue instruction for not referring the cases to these hospitals which includes P.D.Hinduja National Hospital. Applicant in his rejoinder states that he ^{was} aware of the Headquarters letter dated 9-4-90 but since it was vague and did not specifically mention the names of hospitals to which AMA's should not refer cases the applicant wanted the matter to be pursued further. This contention of the applicant is untenable and from the documents on record it is clear that not only was the order of de-recognition of P.D.Hinduja National Hospital under CGHS was issued in or about March '88 but the applicant was aware of such withdrawal ~~xxxxxxxxxxxxxxxx~~ at least since January '90. The period of treatment of his wife was ^{from} 20-4-90 to 4-5-90 and this period was well after the issue of instructions by the Head Office of ESIC which were already known to the applicant and therefore, the action of the applicant in sending his wife for treatment in P.D.Hinduja National Hospital was clearly a calculated risk. When a person takes a calculated risk he is required to face consequences and the applicant in this case cannot say that correspondence on the subject was still going on and therefore he was entitled to admit his wife for treatment in P.D.Hinduja National Hospital and claim reimbursement. It so happened that the ^{wife of} the applicant expired subsequently on 25-5-92 and on the basis of the

representation of the applicant the Standing Committee of the ESIC did sanction an ex-gratia amount of Rs.15,166/- which was on account of cost of Mitral valve Rs.15,000/- and cost of medicines in connection with the above Rs.166/- So far as the contention of the applicant that there was no formal decision of the Standing Committee of the ESIC de-recognising the Hinduja Hospital, respondents have invited our attention to the circular dt.30-6-1988 which has been annexed to the written statement of the respondents opposing the admission of the O.A. in which it is stated in para-1 as below:

"The Standing Committee of ESI Corporation at its meeting held on 15th February, 1988 has decided that in future the practice of CGH Scheme recognising hospitals for Central Government employees may be followed in respect of the Corporation employees also on the terms and conditions as approved by CGH Scheme."

This O.M. is the complete answer to the contention of the respondents.

5. The applicant, however, would like to rely on the recent decision of this Tribunal in O.A.135/90 decided on 16-6-95 in the case of N.B.Rao (since died on 17-12-93) through L.Rs. vs. G.M. Western Railway. In para-6 it is stated that "Rule 9 relates to treatment without prior consultation and says that where in an emergency a railway servant goes for treatment including confinement to a Government hospital without prior consultation with the authorised medical attendant, reimbursement of medical expenses to the extent otherwise admissible will be permissible if after a careful examination of the circumstances of the case the competent medical authority accords an ex-post facto approval."

6. According to the applicant as in the case of N.B.Rao the case of his wife was also that of emergency and therefore the respondents should reimburse the whole of the bill in connection with the treatment of his wife following the ratio of N.B.Rao's case. Nothing has, however, come on record that the case of applicant's wife ~~was of the nature of~~ emergency. On the other hand the case of N.B.Rao was decided of the facts that:

"In November 1987 he suffered a heart attack and was admitted in Jewal Nursing Home in a state of emergency and was treated there upto December 20, 1987. He resumed duties thereafter but continued to have treatment in Jagjivan Ram Hospital. On 11.10.1988 the applicant had been for a check up to Perambur Railway Hospital on Southern Railway and there the Doctors opined that the condition of the applicant was not well and high risk surgery was necessary. After return the applicant approached the Jagjiwan Ram Hospital and the Doctors of Jagjiwan Ram Hospital were not able to diagnose the deteriorating condition of the applicant and he was treated as an out door patient. On April 1, 1989 he had a severe chest pain and his family doctor tried to get some one to perform surgery and as the applicant was sinking he was sent in a state of emergency to Breach Candy Hospital, Bombay and was operated upon by Dr. Bhattacharya on 3.4.89 for coronary Artery Bypass surgery and had to bear the expenses amounting to Rs.97,874/- "

7. It is therefore clear that facts of N.B.Rao's case and the case of applicant's wife ^{are} different. The counsel for the respondents also pointed out that N.B. Rao's case ^{was} decided on the interpretation of the rules applicable to Western Railway but there is no corresponding rule for treatment during emergency in the case of central govt. employees other than railway. We are therefore, inclined to agree ^{that} N.B.Rao's case does not help the applicant.

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8. We are, therefore, of the view that the applicant has not made out any case for reimbursement of balance amount of Rs.67,417/- in connection with the treatment of his wife. In our view the department has acted fairly in making the ex-gratia payment knowing well that the applicant was incharge of the concerned ^{and} section, ~~/~~deliberately admitted his wife to Hinduja Hospital with the knowledge that recognition of the same was withdrawn. We, therefore, dispose of this O.A. by passing the following order :

O R D E R

O.A. is partly allowed.

Applicant is not entitled for any relief in respect of medical charges in connection with the treatment of his wife in P.D.Hinduja National Hospital which is not a recognised hospital. But so far as the payment of medical bill of applicant himself for treatment in Nanavati Hospital which is a recognised hospital is concerned Respondent No.2 is directed to sanction the additional amount of Rs.5,114.60 and pay the same to him along with interest @ 12% w.e.f. one year prior to the date of filing of application viz. 8-4-1993 till the actual payment. There will be no order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

7/9/95

Shri Suresh Kumar Adv. for
the respondent present
Judgement pronounced in open
court -

R.P. No-40/96.
by circulation
with M.P. 180/96.
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