

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 256/98

DATE OF DECISION: 12th Nov., 99

Shri R.K. Sengupta _____ Applicant.

Shri R.Ramamurthy _____ Advocate for
Applicant.

Versus

Union of India and others. _____ Respondents.

Shri V.G.Rege _____ Advocate for
Respondent(s)

CORAM

Hon'ble Shri S.L.Jain, Member 'J)

Hon'ble Shri

- (1) To be referred to the Reporter or not? No
- (2) Whether it needs to be circulated to No
other Benches of the Tribunal?
- (3) Library. No

S.L.JAIN 18.11.99
(S.L. JAIN)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 256/98

the 18th day of NOVEMBER 1999.

CORAM: Hon'ble Shri S.L.Jain, Member (J)

R.K.Sengupta
Residing at
D-7, New Prem Nagar,
Bldg. No.1,
Borivli (West), Mumbai.

...Applicant.

By Advocate Shri R.Ramamurthy.

V/s

1. Union of India through
The Secretary
Ministry of Finance,
Department of Revenue
Government of India,
North Block, New Delhi.
2. The Commission of Customs (G)
New Customs House,
Ballard Estate, Mumbai.
3. The Director General of
Health Services.
Department of Health,
Ministry of Health &
Family Welfare,
Government of India,
Nirman Bhavan, New Delhi.
4. The Deputy Director General
Central Government
Health Scheme,
United India Building
2nd floor, Sir P.M.Road,
Fort, Mumbai.Respondents.

By Advocate Shri V.G.Rege.

ORDER

(Per Shri S.L.Jain, Member (J))

This is an application filed under Section 19 of the Administrative Tribunals Act 1985 seeking the relief of quashing and setting aside the decision conveyed under letter dated 31.5.1994 of the Ministry of Finance based upon the note of

S.L.Jain

Ministry of Health (DGHS) dated 28.12.1993 (Exhibit A) rejecting the medical bill of Rs. 1,46,031/-, a direction to the respondents to pay the medical bill of Rs. 1,46,031/- if necessary by relaxing the rules alongwith interest at the rate of 18% per annum from 7.10.1991 till payment and costs of the petition.

2. Respondent No.2 has filed written statement admitting the facts that the applicant was working as Superintendent of Customs(Prev.) in 1990 with basic pay of Rs. 2675/-, as per Dr.V.S.Parulekar(AMA) vide certificate dated 25.9.1991, the applicant suffered a massive heart attack and was admitted in the nearest Suvarna General Hospital with ICU facilities as there was no Government Hospital in Borivli. On advice of the visiting Cardiologist of the said Hospital the Applicant consulted the senior most Cardiologist attached to Jaslok Hospital who advised immediate Angiography to ascertain the damage and block. After performing Angiography at Hinduja Hospital he was advised to undergo immediate surgery. Dr. V.S. Parulekar (AMA) vide certificate dated 25.9.1991 attached bills and receipts for the medicine purchased by the applicant. After submission of the medical bill of the applicant the same was forwarded to the Ministry of Finance on 11.2.1992 with recommendataion for reimbursement in full to the applicant. Since there was no reply from the Ministry, reminders were issued vide letters dated 17.3.1992 and 1.7.1992. Thereafter reply dated 20.8.1992 was received from the Ministry of Finance, wherein it was mentioned that the Director General of Health Scheme be

consulted in accordance with OM dated 26.7.1990 and details submitted to the Ministry for relaxation of Rules of reimbursement. Further the DGHS desired to know why the Surgeon's fee of Rs.45,000/- was charged separately. Reply to the same was sent vide letter dated 11/16.2.1993 that the hospital bill and the surgeon's fees have been shown separately because the surgeon insisted for the payment of his fees separately and not alongwith the hospital charges. The Collector of Customs, Mumbai forwarded the representation of the applicant dated 26.5.1993, addressed to the Joint Secretary, Customs and Central Excise and requested for early decision alongwith copy of the prescribed application claiming reimbursement of medical expenses, reply dated 31.5.1994 was received by the Collector of Customs turning down the medical bill submitted by the applicant.

3. The applicant's case in brief is that he has suffered a massive heart attack on 25.12.1990 and was immediately shifted to Suvarna General Hospital in Borivli West as there was no Government Hospital in Borivli. The applicant was discharged from the above hospital after a period of 18 days. Cardiologist of the said hospital, Dr. J. Gotor, M.D. advised him to consult a Senior Cardiologist for further line of treatment. Accordingly, the applicant consulted Dr. Munshi, a seniormost cardiologist of Bombay who after taking cardiogram and stress test advised the applicant to undergo Angiography at the earliest to ascertain the blockages in the heart. The Doctor also advised him

complete bed-rest. The applicant got angiography done by Dr.J.Dalal. Again the applicant was advised to undergo immediate surgery. The applicant himself was inclined to be admitted in Bombay Hospital for heart surgery but due to pre-occupation of the Surgeon, Dr. Bhattacharya, immediate date could not be obtained. The applicant consulted four more eminent cardiologists in Bombay. All the Doctors advised immediate surgery. None of the cardiologists recommended Bombay Hospital. Dr. Bhattacharya agreed to operate on condition that the applicant should get himself admitted to Breach Candy Hospital. The applicant was admitted to Breach Candy Hospital on 10.4.1991 and operated by Dr. Bhattacharya on 12.4.1991. The applicant was discharged from the hospital on 21.4.1991 and advised four months complete rest. The applicant states that he incurred an expenditure of Rs.1,46,031.25/- in connection with the said surgery undergone by him at the hands of Dr. Bhattacharya in Breach Candy Hospital. The applicant submitted all the related bills including purchase receipts, duly attested by Central Government authorised Doctor, to the Customs Authorities in Bombay alongwith certificate issued by Dr. V.S. Parulekar dated 25.9.1991 who is a panel Doctor,A.M.A.,Government of India for Air India, Indian Airlines, Special Steels Limited and also L.I.C. After attestation on or about 7.10.1991 the bill was forwarded to the Ministry of Finance, New Delhi under letter dated 11.2.1992 duly recommended. Reminder was sent by the Bombay Customs Authorities by letter dated 17.3.1992. A further reminder dated 30.4.1992, and an other reminder dated 1.7.1992 was sent. A reply dated 20.8.1992 was received from the

Under Secretary to the Government of India, Ministry of Finance and it was mentioned therein that the Director General of Health Scheme (DGHS), on being consulted, referred to the O.M. dated 26.7.1990 asking the details to be submitted for relaxation of Rules of reimbursement. The Ministry asked the Collector of Customs, Mumbai to examine the medical bill of the applicant in the light of the aforesaid O.M. dated 26.7.1990 and re-submit the same for seeking approval from DGHS. A reply dated 21.9.1992 was sent by the Bombay Customs Authorities to the said letter dated 20.8.1992 alongwith a request to supply the copies of the said O.Ms.dated 23.2.1977, 7.5.1979 and 18.6.1982 which was replied that said O.Ms are reproduced in the Swami's Compilation of Medical Attendance Rules (9th Edition). After a further correspondence in May 1993 a letter kwas received from the Under Secretary to the Government of India that connected papers and medical bills are also been resubmitted on 20.7.1993. An early decision was requested by letter dated 26.5.1993 and reply to the same was received by letter dated 31.5.1994. The Collector of Customs is not denying the correspondence. Hence this OA.

4. The applicant is challenging the rejection of his medical bill on the ground that the reasons given in the note of Ministry of Finance are perverse, arbitrary, whimsical, capricious and without application of mind. The applicant has under gone a major surgical operation like By-pass surgery, has to abide by the advice of the surgeon as to in which hospital he should get himself admitted. Bombay Hospital and Nanavati Hospital are private hospitals, while deciding the medical bill, only the

fact to be considered is whether the charges incurred were reasonable or not. The choice of the hospital is always left to the beneficiary himself. In the cases of recognised private hospitals, the expenditure actually incurred always exceeds the amount prescribed under the package deals. The respondents are bound to reimburse the actual expenses incurred unless any valid dispute can be raised as to the reasonableness of the charges or there is any genuine opinion entertained that the charges claimed by the applicant have been on an inflated basis. The Ministry of Finance was to decide the matter itself without referring it to the Ministry of Health. "The Government is under Constitutional obligation to provide free health care to its employees including retired personnel and pay the entire expenditure on heart surgery and hospital or hotel expenses incurred by its ailing staff."

5. The application is resisted by respondent No.1 and 2 on the ground that the applicant do not have any cause of action. Respondent No.4 has resisted the application on the ground that it is barred by limitation. The application is filed on 5.3.1998 after a lapse of about 4 1/2 years after 28.12.1993. A further representation in June 1994, correspondents thereafter vide letters Exhibit C, D, E, F, G & H is nothing but the submission of the repeated representation by the applicant, which does not save limitation. The correspondent is also not with or by respondent No.3. The By-pass survery was performed after about 1 1/2 months time from the date of Angiography. Breach Candy hospital which was not a recognised hospital, was the choice of the applicant. Only in an emergency situation the medical aid

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from such hospital can be obtained. Nanavati Hospital which is recognised hospital was near to the place of the applicant. Bombay Hospital and Nanavati Hospital are recommended and fully equiped with all medical facilities. Dr.Bhattacharya also attends the said hospital. The expenditure in Bombay Hospital are less than the expenditure in Breach Candy Hospital. There is nothing on record to justify that none of the Cardiologists advised Bombay Hospital or Dr. Bhattacharya kindly agreed to operate on the condition that the applicant should got admitted to Breach Candy hospital. The Rules in this respect do not allow any choice for getting any treatment or operation done in a particular recognised hospital or by a particular surgeon as the patient was not in emergency condition. There was absolutely no case for relaxation of whatsoever in the case of the applicant. Hence prayed for dismissal of the OA alongwith costs.

6. Respondent No.4 also rightly objected at the time of admission on the ground that the applicant is not covered by CGHS as he resides at Borivli outside area covered by CGHS. Hence he is not eligible and entitled to get any medical facilities and benefits under the scheme.

7. The applicant has avered in OA in para 5(i) that the Bombay Hospital's reputation, that it was using sub-standard drugs resulting in the death of the patients, was a factor which the surgeons took into account and they wanted to avoid performing major operations in Bombay Hospital so as to safeguard their own images. The said fact has no bearing for the reasons that the said news was published on 3.6.1991 while the operation of the applicant was performed on 12.4.1991.

8. The learned counsel for the applicant relied on AIR 1997 SCC 1225 State of Punjab V/s. Mohinder Singh Chawla and argued that approval granted for specialized treatment in hospital outside State - Reimbursement of room rent charges- cannot be rejected. I agree to the said proposition of law.

9. The learned counsel for the applicant relied on AIR 1996 SCC 1388 Surjit Singh V/s State of Punjab and others. and argued that Claim for reimbursement at rate of private institution-Entitled to be allowed-The Government cannot insist an employee to get himself treated at recognised Government Institution and claim rates prevailing there. In the said authority in para 11 it is mentioned that it is not expected to stand in queue in the Government Hospital of AIIMS, it is fair and just that the respondents pay to the appellant, the rates admissible as per Escorts. It is a case that the operation was performed in London and admissible amount of Rs. 40,000/- was ordered to be adjusted in computation. After the said decision we have the case decided by the Apex Court reported in 1998 SCC (L&S) 1021 State of Punjab and Others V/s. RamLubhaya Bagga and others referring Surjeet Ssingh's case which lays down the proposition that the decision of the State to restrict financial assistance to its employees for medical treatment, within the resources of the State is not violative of Article 21.

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10. The claim of the applicant was rejected as long as on 31.5.1994 by Ministry of Finance, Department of Revenue which was forwarded to the applicant vide letter dated 14.6.1994. It is true that the applicant further represented the matter, Respondent No.2 forwarded his representation, and reply from time to time has been received from the Ministry. Successive representation does not give a fresh cause of action to the applicant. When once the matter is decided the applicant to agitate the matter in proper forum.

11.....In view of the fact that immediate surgery was not necessary and there is nothing on the part to come to a finding that Dr. Bhattacharya was not willing to perform the operation in Bombay Hospital particularly when he has performed heart surgery in Bombay Hospital in the same period, the grounds taken by the applicant are not established.

12.....In the result OA deserves to be dismissed as barred by time and also lacks in merit and is dismissed accordingly. No order as to costs.

31-8-1994
(S.L.JAIN)
MEMBER(J)

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