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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

O.A.No.1672/97.

Date of decision: 30.3.98

Between:

Hari Kishan Rao. .. Applicant

and

1. Union of India represented by the Secretary to Government of India, Ministry of Finance, Department of Revenue, New Delhi.
2. Director General, Health Services, Ministry of Health & Welfare, New Delhi.
3. Commissioner of Central Excise, Guntur. .. Respondents.

Counsel for the applicant: Sri K.S.R. Anjaneyulu.

Counsel for the Respondents: Sri V.Rajeswara Rao.

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O.A.No.1672/97

JUDGMENT:

Date of decision:

Heard Sri K.S.R.Anjaneyulu for the applicant
and Sri V.Rajeswara Rao for the respondents.

1. On being referred to by a local Physician at Guntur where the applicant was posted at the relevant time (8th August, 1995) he consulted a Cardiac Specialist at Hyderabad on 10th August, 1995 within two days of the initial reference. The Specialist advised him to undergo a major surgery in view of his continuing discomfort and ill-health. The applicant was admitted into a private Nursing Home on 18th August, 1995 i.e., within ten days of the initial reference and underwent bye-pass heart surgery on 19-8-1995 i.e., a day after he was admitted as an in-patient. The next 14 days were spent in convalescence. The surgery and medical attention during recuperation cost the applicant Rs.80,250/-. He was discharged from the hospital on 1st September, 1995 and was advised rest and submitted a claim for Rs.80,250/- on 18-10-1995 i.e., within about 45 days from the date of admission and discharge. The claim came to be rejected in August, 1997, on the ground that the applicant had received treatment in an unrecognised Hospital. It is stated that the Central Government Health Scheme Authorities,

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who had been consulted in the matter, had opined that the Surgery performed in the said Hospital could not be regarded a case of medical emergency and no reimbursement may, therefore, be allowed on this claim.

2. The applicant submits that --

- i) He was not covered by CGHS Scheme at Guntur and was obliged therefore to consult an authorised medical attendant.
- ii) The town had no facilities for by-pass surgery.
- iii) The Authorised Medical Attendant whom he had consulted, had specifically asked him to consult a particular Cardiologist at Hyderabad which incidentally was nearest to the town where he was working where his family normally resided
- iv) The Cardiologist had after a thorough check, advised him to be admitted at the earliest for undergoing the by-pass surgery.
- v) The hospital where he sought admission and was operated upon and treated subsequently is one of the reputed speciality Hospital for the type of surgery performed.
- vi) The cardiac surgery was indeed done only as an emergency as some would not possibly have been undertaken if sufficient cause for urgency did not exist.

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Based on the above pleadings, the applicant prays for a declaration that the rejection of his claim is unreasonable, and for setting aside the same.

3. The respondents in their counter-affidavit state that the local Physician at Guntur who was stated to have referred the applicant to the Speciality Hospital at Hyderabad had not prescribed a particular drug (tablet) initially which is the case in all emergencies. Further that the applicant had also failed to produce the said local Doctor's letter of reference while submitting his claim, that the certificate issued by the Cardiologist at Hyderabad did not indicate clearly that it was an emergency case which required urgent surgical intervention. Their main objection is that, between the initial letter of advice as stated to be given by the local Doctor at Guntur on 10-8-1995 and the date of surgery on 19.8.1995, the applicant had also consulted another physician at Hyderabad who had since stated that he had undergone treatment for fever and chest-pain on 16-8-1995 and 17-8-1995. But this certificate was issued only on 13-10-1995. This appearance of an endeavour to cover up the intervening period between 10-8-1995 (the date on which he is stated to have been referred by the Doctor at Guntur) and 18-8-1995 (the date on which the applicant was

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admitted in the Speciality Hospital.) In the opinion of the respondents, the genuineness of the certificate issued by the applicant's (family) physician at Hyderabad on 13-10-1995 is not beyond doubt. It is disclosed that three Hospitals at Hyderabad have been recognised for by-pass surgery and the Hospital where the applicant underwent such surgery did not figure in the list of recognised hospitals. They point out that treatment in a private Medical Institution, nursing home or hospital can be resorted to only in emergent cases involving accidents and serious diseases of real emergency necessitating immediate admission. They assert that reimbursement of expenses incurred on treatment obtained in private Clinics/Nursing Homes would not normally be admissible. In this connection they refer to Appendix VIII (Reimbursement in Relaxation of Rules in Emergent Cases) to Medical Attendant Rules in Swamy's Compilation of Medical Attendant Rules, 1995. The respondents add that CGHS (Ministry of Health and Family Welfare) who had been consulted in the matter had not cleared the claim of the applicant. The respondents submit, therefore, that the O.A., lacks merits and deserves to be dismissed.

4. In a rejoinder to the counter-affidavit, the applicant reveals that on an earlier occasion he had, a short while prior to the spell of illness necessitating the present surgical operation, undergone coronary angi. Since that brought no

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relief and as there was recurrence of the problem and a set-back in his condition, the local physician at Guntur when consulted had indeed advised him to take a particular tablet which he had duly purchased and used. He states that it would not be possible for him to produce the prescription for this tablet after such a long lapse of time. He further discloses that the Specialist on examining him afresh had pronounced that three of his heart vessels showed degeneration and blockage and that surgery was therefore not merely essential but postponable. As he was required to deposit large amount of money in advance, he was obliged to stay back for the next few days, and while still engaged in the process of collecting the needed funds, he had a further minor set-back and was treated by his family physician. Eventually, he managed to gather and deposit a major part of the necessary amount required by the Hospital. On the very next day of his admission into it surgery was performed. The remaining amount was paid subsequently in two monthly instalments. Explaining as to why he had omitted to submit the original certificate from his physician at Guntur along with the claim, the applicant states that in view of the unambiguous statements contained in the "B" Certificate signed by the

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Specialist, and issued by the Hospital, it was not considered inescapably necessary to add the original letter of reference from a general Physician. Responding to why the Medical Certificate covering the period 16.8.1998 to 17.8.1995 was issued by his family physician of the applicant only on 13-10-1995, the applicant states that the said certificate was obtained only when the applicant was obliged to apply for leave of absence beginning from the time he left for Hyderabad, on the advice of the Physician at Guntur. The said Certificate was but a part of the set of documents which covered the entire period and it was duly countersigned by a Civil Surgeon. It is also added that the leave applied for was duly sanctioned and the absence was also regularised. In the circumstances, it would be wholly incorrect to question the genuineness of a certificate issued by a qualified physician and countersigned by a competent Civil Surgeon. It is submitted that CDR Hospital, though admittedly a private Nursing Home at the time, it was duly recognised by the Government only a shortwhile later. Finally, the chief reason for his approaching the said Hospital and to consult the Specialist there was that the same Surgeon had treated him just a month prior to the date of operation. The very fact that surgery had had to be performed within less than twenty-four hours after his admission would show that it was undoubtedly a case of dire medical emergency even if it had not been specifically indicated in a

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particular document.

5. Based on these arguments, the applicant maintains that the rejection of his claim is unreasonable, untenable and unjustified, violating as it does his right to life of which good health is a necessary concomitant.

6. In the conspectus of the facts and circumstances disclosed by both the sides in this case, it becomes necessary to first go into the basic issue involved in the case:

Whether or not the surgery undergone by
the applicant was an urgent necessity?

The fact that a major surgery was performed on the applicant is not in doubt, and the additional fact that the surgery was performed in a reputed Hospital has also not been disputed; so too the fact that the surgery was undertaken by a Specialist Surgeon which is beyond question. From these attendant facts it would be possible to draw a logical inference that the treatment recommended and surgery performed by a Specialist in a renowned Hospital was neither untimely nor premature though the hospital in question may not have been recognised for the purpose at the relevant time (It is noted that it has since been brought on the approved list of such hospitals).

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It would also be necessary to take note of the fact that a patient would not normally jump at the prospect of subjecting himself to the painful process of a major surgery, unless an urgent need was felt by him on the advice of a specialist surgeon. I find no convincing reason as to why at all an ^{and professional intervention} expert opinion of a specialist should be viewed with distrust.

7. The reasons ascribed by the respondents for rejecting the claim need to be scrutinised against the backdrop of what has been stated above. The respondents say that the local physician at Guntur who referred the applicant to a Specialist in Hyderabad had not prescribed a particular medicine or tablet which is invariably prescribed in such situations; and since it was not so prescribed, this may not at all have been an emergency case. The applicant states that he was indeed advised by the said physician to use that particular tablet and he ^{had} duly purchased and used it. One tends to agree with the applicant's statement that it was not possible for him to produce the relevant paper prescribing that tablet after such a long ^{health} lapse of time. When a person is beset with a problem relating to heart, he would rather be thinking of how soon he would be able to consult a specialist than preserving a single paper of prescription for a tablet. In such an agitated state, he may well have failed to obtain

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and preserve a particular prescription.

8. The respondents say that while submitting his claim the applicant failed to attach the letter of the local physician at Guntur by which he (the applicant) was referred to the Specialist in Hyderabad. The applicant replies that it was hardly inescapably necessary to do so, as the Medical Officer-in-charge of the case at the hospital had duly certified that the applicant was suffering from Coronary Artery disease during the relevant time and the Medical Superintendent (Specialist Surgeon) had not merely countersigned the above fact but had actually certified that the applicant was under his treatment during the same period. In view of this it was not inescapably necessary to attach the said letter from a Non-Specialist Physician at Guntur. The respondents' objection with regard to the medical certificate issued by the applicant's family physician at Hyderabad on 13-10-1995 (to cover the treatment on 16-8-1995 and 17-8-1995) has been adequately met by the applicant as recorded elsewhere in this Order. I regard this explanation as sufficient and convincing. In any case, the entire period of the applicant's absence from duty covering his surgery and convalescence having been regularised by ^{the} sanction of proper leave, based on valid and acceptable Medical Certificates, there is little scope and point in belatedly raising doubts about a particular

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portion of this entire period and then making it a ground for rejecting the claim.

9. It is true, as already pointed out, that the hospital where by-pass surgery was performed was not recognised at the time, but one cannot lose sight of the fact that the same hospital was so recognised only awhile later which naturally testifies to the satisfactory standards of the institution and the professional competence of the surgeons therein.

10. There are essentially two aspects to this case: firstly, the narrow ambit of rules and the consequent bounds imposed by those very rules and their interpretation; secondly, the overall circumstances justifying an unavoidable resort to slight deviations from the strict parameters in the said rules. It would be useful to remind oneself that no hospital, much less a renowned hospital, or ^a reputed surgeon, would undertake a major surgery if the same were not, in their considered opinion, not urgently required. Nor, as already recorded elsewhere, would any patient undergo such an ordeal if he did not feel the necessity for it. Such a view would seem to lend itself to logic and common-sense. And finally, it also needs to be pointed out that the bonds of trust and confidence between a patient and a particular

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surgeon of his choice would also seem to have their own logic and these cannot invariably lend themselves to a strict and mechanical interpretation of rules. This would answer the objection raised by the respondents as to why the applicant chose to go to a particular specialist or a hospital and not to others. It is all a matter of trust and confidence between the patient and the surgeon. In the ultimate analysis what ought to count is whether the claim is genuine and the expenditure incurred ~~on~~ cure, recuperation and treatment is bonafide. In the overall background and context of really emergent circumstances, a couple of minor omissions or deviations from mandatory regulations need necessarily to be ignored and condoned.

11. Mr. Rajeshwara Rao, learned counsel for the respondents drew my attention to paragraph-4 in the order (dt. 30-3-1993) of Bangalore Bench of this Tribunal in KPG Nair vs. Superintending Surveyor, Survey of India & Ors. (1993)25 ATC 671. The said para is as under :

"Therefore, a government servant who is to take treatment in a private institution where services aforesaid do not bear any comparison to what is provided in Govt. institutions costwise and it is well known that private nursing homes generally out to make profits in a large scale as such it would not be reasonable to expect the Government to honour the bills of its servants incurred for their treatment although that treatment would be available at a Govt. institution at a comparatively moderate or economical expenditure. The rule in question is symbolic of Government's desire to avoid wasteful expenditure. The challenge therefore to such a rule is

uncalled for, therefore fails and discarded. Otherwise on the basis of the said rule it becomes clear the rejection of the claim for reimbursement by the Government cannot be faulted. "

The learned additional standing counsel argued on the basis of the above observations that no reimbursement for treatment incurred in a private hospital could at all be reimbursed. I am afraid that, torn out of context, this is a misleading argument. It would be necessary to take note of the very preceding paragraph of the same judgment, which is as under :

"We live in a welfare State in which Govt. assumes considerable responsibility towards life and well-being of its citizens and with reference to its own civil servants it takes care to provide essential services either free of cost or at a minimum cost recovered from the Govt. servant concerned. It is because of the huge expenditure the State incurs in providing health facilities to the civil servants it asks they take treatment from its own hospitals and inter alia provides for treatment in private hospitals only where the required treatment is not available in a Government institution or Govt. recognised institutions or in a grave case beset with sudden emergency requiring treatment elsewhere because the person cannot be taken at the risk of his life to a Government institution some leeway is made and treatment taken elsewhere is debited to the cost of the State and reimbursement ordered. This appears to be the scheme of the rule which is a reasonable one but is nonetheless attacked. The rule does not per se put a restraint on the person in the matter of taking treatment at any place of his choice. If he does so, he has to pay for himself. But, if he wants to get reimbursed then he has to go through the regular channel. But, even then he can bypass Government institutions and take treatment elsewhere provided it is

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based on sheer necessity and compulsion of circumstances."

Additionally, the Tribunal duly noted the amendment to ~~in~~ rules, in para-5 of the same order thus :

"5. But, then our attention is invited to a modified rule which has come into existence on 4-2-1993 subsequent to the arising of the cause of action in this case. The above rule removed the distinction between a private hospital and a private nursing home/clinic making it uniformly applicable to all private medical institutions without making any distinction between a private hospital and a private nursing home/clinic."

12. On his part, Mr. Anjaneyulu, learned counsel for the applicant, referred to para-6 of the order passed by the Jabalpur Bench of this Bench in N. M. Rokde vs. U.O.I. 1996(3)SLJ(CAT)215. The order duly noted the views of Hon'ble Supreme Court in Surjit Singh v. State of Punjab and Others. [1996(1)Scale 648] The said para in the order passed by the Jabalpur Bench is as under :

"6. The fact is that the applicant did not obtain consent technically in the proforma prescribed yet it cannot be denied that he made the payment to the Appollo Hospital in full. The Hon'ble Supreme Court had an occasion to consider similar matter (infra) regarding the medical expenses incurred by an employee who had got himself operated in U.K. and whether he was entitled to reimbursement. The Supreme Court has pointed out that urgency for such operation is the real question to be seen. One's life is the necessary concomitant of the right of life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of

self defence in criminal law. The Supreme Court held in the facts and circumstances, that had the appellant remained in India, he could have gone to ... the Escorts like many others did, to save his life. But instead he had done that in London incurring considerable expense. The doctors causing his operation are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay to the appellant, the rates admissible as per Escorts. The claim of the appellant having been found valid, the question posed at the outset is answered in the affirmative. The Supreme Court restricted the claim to one which he could have been entitled had he got operated in Escorts, which is also a private hospital. We consider that the Apollo Hospital which is/reputed hospital for the said surgery has charged an amount and the applicant has paid for the same. "

"...On the parity of the same reasoning we are inclined to allow the present application and direct the respondent to sanction the amount ..."

13. In the light of the facts contained in the OA, the counter-affidavit and the rejoinder to the counter, and on the basis of the submissions made during the hearing of the case, as also the observations and findings in the judgments cited above, the final position of the claim in the present case becomes unambiguously clear. It is held that all reasonable charges and such of the expenses incurred which are admissible in the normal course should be sanctioned to the applicant and his claim should be settled accordingly.

The amount so sanctioned shall be limited to

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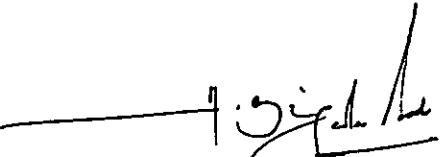
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what would have been charged by, and admissible to be reimbursed to, any of the three recognised hospitals for similar treatment if the same surgery/treatment ~~had~~ been provided by any of such hospitals.

14. Thus the OA is disposed of.


(H. RAJENDRA PRASAD)
Member (A)

30 MAR 98.

sss/MD


Deputy Registrar

O.A. 1672/97.

To

1. The Secretary to Govt. of India,
Ministry of Finance, Union of India,
Dept. of Revenue, New Delhi.
2. The Director General, Health Services,
Ministry of Health & Welfare, New Delhi.
3. The Commissioner of Central Excise,
Guntur.
4. One copy to Mr. K. S. R. Anjaeyulu, Advocate, CAT. Hyd.
5. One copy to Mr. V. Rajeswar Rao, Addl. CGSC, CAT Hyd.
6. One copy to HHRP.M.(A) CAT. Hyd.
7. One copy to D.R (A) CA¹. Hyd.
8. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD

THE HON'BLE MR. JUSTICE

VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

DATED: 30-3-1998

ORDER/JUDGMENT:

M.A./R.A./C.A. No.

O.A. No.

in
1672/97

T.A. No.

(Q.W.P.)

Admitted and Interim directions
Issued.

Allowed

Disposed of with direction

Dismissed.

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm.

