

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.196/99.

DATE OF ORDER : 16-9-1999.

BETWEEN :

A.Satyanarayana,
S/o A. Veerabhadra Rao,
aged about 57 years,
Occ-Superintendent(E/M),
Military Engineer Services,
O/o Chief Engineer, (R&D),
Secunderabad.

.. APPLICANT

(By Advocate Mr.Shiva)

A N D

1. Union of India, rep.by the
Secretary to Government of India,
Ministry of Defence, New Delhi.
2. The Chief Engineer (Fy), Hyderabad,
Opp.Parade Grounds, S.P.Road,
Secunderabad - 500 003.
3. The Controller of Defence Accounts
No.1 Staff Road, Secunderabad.
4. The Additional Director,
Central Government Health Scheme,
Kendriya Swasthya Bhavan,
Begumpet, Hyderabad.

.. RESPONDENTS

(by Standing Counsel Mr. V.Rajeshwara Rao)

CORAM :

THE HONOURABLE MR. JUSTICE D. H. NASIR, VICE-CHAIRMAN.

Contd... 2.

O R D E R.

Justice D.H. Nasir, VC:

1. The 3rd respondent is sought to be directed in this O.A. to settle the claim of the applicant in respect of the medical treatment undergone by him in the CDR Hospital on the reference having been made by the doctor of the Central Government Health Scheme (for short, "CGHS"), at Hyderabad.

2. The applicant pleads that while he was posted at Jammu, he met with an accident which resulted into an amputation of his right leg because of Osteomyelitis in 1987 at Nizam's Institute of Medical Sciences. This handicap, however, according to the applicant, did not produce any adverse effect on discharging his function. When the applicant was posted as Superintendent E/M Grade I at the office of the 2nd respondent and during February, 1998 when he visited the CGHS, Begumpet on a complaint of Carbuncle, the doctor on duty Dr. Amulya opined that the applicant be examined by the Endocrine Surgeon. Based on the said recommendation, the 2nd respondent referred the applicant to a recognised Hospital (Referral Hospital). Necessary proceedings in that regard were initiated and the applicant was referred to CDR Hospital, Secunderabad by order dated 28.2.1998. The Specialist on duty of the said hospital advised the applicant to get admitted as an indoor patient as the Specialist was of the view that appropriate surgery may have to be done. Accordingly the applicant was admitted to the said hospital and he was operated upon successfully. The applicant was discharged on 6.3.1998. He submitted a claim of Rs.13,985/- towards the expenditure incurred by him in this regard. The claim was supported by the Essentiality Certificate issued by the

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CDR Hospital and other documents necessary for settlement of the claim. The 2nd respondent prepared the bill in this connection and forwarded the same to the 3rd respondent. The 3rd respondent scrutinised the said bill and restricted the claim to Rs.9,989/-. However, according to the applicant, the 3rd respondent was not correct in restricting the same by disallowing certain amounts charged by the referral hospital in respect of consultations with certain Specialists. Further, according to the applicant, where a patient had been under the charge of a Specialist, he would have no other option but to undergo the tests and investigations / consultations as recommended by the Specialist and therefore, the amounts in that regard also ought to have been approved by the 3rd respondent. The applicant further points out that the 2nd respondent at a subsequent stage issued an amendment to the Permission letter dated 28.2.1998 to the effect that the address of the referral hospital had been amended as "Medical Superintendent, CDR, Hyderabad" instead of "the Medical Superintendent, CDR Hospital, Secunderabad".

3. The 3rd respondent thereafter by his proceedings No.MED/6017/CE(FY)/VOL-I dated 17.7.1998 returned the claim of the applicant to the 2nd respondent raising certain objections. The main objection was with regard to the recognition of the CDR Hospital, Secunderabad. According to the respondents, this hospital had not been recognised as "Authorised Hospital" and therefore, the claim could not be entertained. It was further contended by the respondents that the rules in vogue specify that the treatment availed at the Branch hospitals could not be entertained for reimbursement. It is further contended by the respondents that if any deviation took place with

regard to treatment taken at the extension centres, the competent authority which could clarify the point was CGHS and not the CDR Hospital and on that basis, the respondents advanced an argument that it was necessary to implead CGHS to this OA and in the absence of CGHS as party, the O.A. was not maintainable.

4. We are, however, not inclined to disallow the O.A. on the basis of such technical defect. Since the case was referred to CDR Hospital by the 2nd respondent himself, it was not necessary to join the CGHS as a party respondent and in any case, it was open to the 2nd respondent to call for a report or remarks from the CGHS so as to obtain correct information with regard to the hospital to which the applicant was referred. This is not a case where any liability could be fixed on CGHS if the applicant's case is accepted by the Tribunal or that any material fact would remain unattended if the CGHS is not a party to the present proceeding.

5. The respondents do admit in paragraph-3 of the counter affidavit that the medical reimbursement claim of the applicant was scrutinised by the Auditor and the admissible amount of Rs.9,989/- out of Rs.13,985/- as mentioned in the claim was otherwise in order. It is further contended by the respondents in paragraph-5 of the counter affidavit that according to the instructions contained in Circular No.5/11011/I/72-CGHS/Tend/Hyd/5314 dated 16.1.1997 the claims on account of treatment availed at Branch hospitals (other than recognised) could not be entertained. It is further pointed out by the respondents that the list of approved hospitals issued by the Additional Director, CGHS, Hyderabad contained only the name of CDR Hospital, Hyderguda, Hyderabad and also contained a provision that any deviation or non-

implementation of suggestion / advice was not permissible and therefore, since the CDR Hospital at Secunderabad was evidently a Branch hospital as against CDR Hospital, Hyderabad, the applicant's claim could not be entertained and was rejected in audit.

6. The entire emphasis in this O.A. is on the proposition that the hospital in which the applicant took treatment for his ailment was only a Branch hospital and not the main hospital and the same is attacked by the applicant on the ground that the applicant was not aware that the CDR Hospital at Secunderabad was a Branch hospital and not the main hospital and that merely on such technical ground, his claim for reimbursement of medical expenses could not be rejected.

7. The High Court of Delhi was confronted more or less with the same situation in the case of NARENDRA PAL SINGH v. UNION OF INDIA AND OTHERS (1999 LAB.I.C.18861). In paragraph-3 of the said judgment, the High Court observed that the petitioner had admittedly suffered the ailment and required urgent and immediate treatment in emergency. The plea of the Government that he had not taken prior sanction for treatment in non-CGHS hospital was clearly erroneous and could not be entertained. Moreover, the law did not require that prior permission had to be taken in such a situation where the survival of the person was the prime consideration. The High Court further observed that it was always open for the Government to grant ex-post facto sanction subject to verification of the claim. The High Court took into consideration the judgment of the Supreme Court in the case of SURJIT SINGH v. STATE OF PUNJAB (AIR 1996 SC 1388) reproducing paragraph-11 of the said judgment which is as follows :

② "11. The appellant therefore had the right to take

steps in self-preservation. He did not have to stand in queue before the Medical Board, the manning and assembling of which, bare-facedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the Government Hospital of AIIMS and could go elsewhere to an alternate hospital as per policy. When the State itself has brought the Escorts on the recognised list, it is futile for it to contend that the appellant could in no event have gone to the Escorts and his claim cannot on that basis be allowed, on suppositions. ..."


8. The facts of the case before us stand on a better footing. The distinction before us is whether the hospital in which the applicant took treatment in accordance with the advice given to him by the authorities concerned, was a Branch hospital and that merely on that ground whether the claim of reimbursement of medical expenses could be rejected; and we are firmly of the opinion that the respondents were not correct in the stand taken by them. The applicant cannot be expected to know, if his attention is not specifically drawn that he should take treatment only in the main hospital which was situated at Hyderabad but not in its Branch which was situated at Secunderabad. This, in our opinion, is a hyper technical approach which should be avoided by the authorities in command. The authorities are expected to take a pragmatic approach to such problems and refrain from taking a rigid stand which may result into a serious prejudice to the claimant. The Government servants who have opted for the CGHS cannot be denied the legitimate claim of reimbursement of expenses which have been actually incurred by them. After all, the Government servants who take treatment in hospitals either as indoor patients or outdoor patients, do not do so for any pleasure. They suffer the pangs of medical treatment only in unavoidable circumstances and therefore, their claims should not be rejected on technical ground. Negative

approach in such matters should better be avoided. If a cause emerges to believe that any effort was made by the Government servant to raise a false bill and to claim reimbursement of such false bills, the matter should be viewed strictly and no mercy could be shown to them. But in a genuine case where a Government servant has incurred medical expenses by getting treatment in the hospital which is included in the approved list of CGHS, a soft and not a harsh treatment need be meted out.


9. If it is the case of the respondents that error was committed by the authority recommending the applicant to be treated in a particular hospital and for that reason, the rejection of the applicant's case should not be disturbed, we are of the opinion that for such error committed by the respondents the applicant cannot be penalised, more particularly, in a situation like the present one where medical treatment was required to be undertaken by the applicant who had his leg amputated as a result of an accident.

10. We, therefore, do not find any incongruity in the claim advanced by the applicant for reimbursement of medical expenses and we have no hesitation in allowing the O.A. and directing the respondents to reimburse the medical expenses incurred by the applicant within two months from the date of receipt of a copy of this order.

The O.A. is accordingly allowed. No costs.


(D. H. NASIR)
VICE-CHAIRMAN.

DATED THE 16th DAY OF SEPTEMBER, 1999.


16/9/99

COPY TO:

1. HON'G
2. HRRN M (A)
3. HBSJP M (J)
4. D.P. (A)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

2 copies to D.P. (A)

1ST AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE - CHAIRMAN

THE HON'BLE MR. R. RAJAGOPALAN :
MEMBER (ADMN.)

THE HON'BLE MR. S.S. JAI PARAMESWAR :
MEMBER (JUDL)

* * *

DATE OF ORDER: 16/9/99

MA/RA/CP.NO.

IN

CA. No.

196/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

NOTED
CLOSED

RA CLOSED

CA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

30 SEP 1999

हैदराबाद न्यायपीठ
HYDERABAD BENCH

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