

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 12.5.95.

OA 384/94

Major R.N. Mathur, NCC/PC-12360, s/o Late Shri J.N. Mathur, aged 54 years, r/o A/54, Major Shaitansingh Colony, Shastri Nagar, Jaipur, presently posted as Administrative Officer, First Rajasthan Battalion NCC, Jaipur.

... APPLICANT.

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, South Block, New Delhi.
2. Director General, NCC, R.K. Puram, West Block No.4, New Delhi.
3. Controller of Defence Accounts (Officer), Pune.

... RESPONDENTS.

CORAM:

HON'BLE MR. O.P. SHARMA, MEMBER (A).
HON'BLE MR. RATTAN PRAKASH, MEMBER (J).

For the Applicant ... SHRI R.N. MATHUR.

For the Respondents ... SHRI S.S. HASAN.

PER HON'BLE MR. O.P. SHARMA, MEMBER (A).

In this application u/s 19 of the Administrative Tribunals Act, 1985, Major R.N. Mathur, an Officer of NCC, has prayed that the respondents may be directed not to recover the amount of Rs.35,000/- from the applicant, as proposed in Annexures A-1 and A-2 dated 26.7.94 and 4.7.94 respectively, being the alleged excess amount paid to Batra Hospital, New Delhi, for medical treatment of the applicant. He has accordingly prayed that these two annexures may be set aside and any order which limits re-imbursement of the amount for such treatment may be declared as ultra-vires.

2. The facts of the case, as stated by the applicant, are that he was commissioned in the Army in 1964 and was commissioned as whole time NCC Officer in 1974. He had a heart problem and Doctors of the Army Hospital, New Delhi, recommended angiography test for the applicant. After the

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requisite test was held, the applicant was advised to undergo Coronary Artery Bypass Graft (CABG) surgery. Since facility of CABG is not available in the Army Hospital, the applicant was advised to undergo CABG surgery in any other private hospital, where such facility is available. As per Annexure A-3 dated 28.3.88, Batra Hospital, New Delhi, is one of the hospitals recognised for the purpose of such treatment and the applicant was entitled to get this treatment at Batra Hospital. The rates to be charged for CABG by Batra Hospital were the same as approved by the Ministry of Health and Family Welfare for CGHS beneficiaries under the Government of India, as per a note in this annexure. The applicant underwent CABG at Batra Hospital on 26.5.93.

3. Further, according to the applicant, before the aforesaid treatment he had submitted a formal application on 2.4.93 to the Director General, NCC, for grant of a loan of Rs. One lac ten thousand, and an amount of Rs. one lac was sanctioned by Director General, NCC, for the purpose of making payment to Batra Hospital. A cheque for Rs. One lac was sent by the Director General, NCC, on 21.5.93 in favour of the Commandant, Army Hospital, Delhi Cantt. (Annexure A-4). In the said letter it was advised that the matter be taken up with the Director General Medical Services (DGMS) for reimbursement of the amount. On 30.4.93, DGMS granted sanction of transfer of the applicant as an entitled patient to the Batra Hospital (Annexure A-5). According to the applicant, usually an amount of Rs.65,000/- is sanctioned for CABG in Batra Hospital. A cheque for Rs. One lac was issued by the Army Hospital, Delhi Cantt. for payment to Batra Hospital.

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Since an amount of Rs. One lac was paid to Batra Hospital, the applicant was asked to refund an amount of Rs.35,000/- to the DG, NCC, because ^{only} / amount of Rs.65,000/- was payable to Batra Hospital for this treatment. The applicant's case is that it was the DGMS who recommended the case of the applicant to Batra Hospital and the amount of Rs. One lac was remitted by the DGNCC to Commandant, Army Hospital, Delhi Cantt., and this amount was paid to Batra Hospital through Army Hospital, Delhi Cantt. The applicant never came into picture in the entire transaction. It is true that only an amount of Rs.65,000/- was payable to Batra Hospital but the applicant cannot be punished for the mistake which was committed by the authorities concerned.

4. The respondents, in their reply, have stated that the applicant had given an undertaking before undergoing surgery, as aforesaid, that he will be liable to refund any amount in excess of the permissible limit (Annexure R-1). A similar undertaking is again at Annexure R-2 dated 2.4.93. According to the respondents, the applicant being a NCC Officer was entitled to medical reimbursement under the CGHS Scheme, for which he had opted. Under the CGHS Scheme, an officer of the Central Government is entitled to medical treatment to the tune of Rs.65,000/- for Coronary Artery Bypass Graft Surgery and allied investigation. The applicant had himself applied for a loan from the regimental fund and had given an undertaking that ^{if} the entire amount asked for as loan is not reimbursed by the Controller of Defence Accounts, the applicant would be liable to pay the excess amount not reimbursed. The amount of Rs. One lac which was paid

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to Batra Hospital, was in fact a loan granted to the applicant for payment towards treatment and what is proposed to be recovered is excess of the loan disbursed to him over the amount of Rs .65,000/- payable towards CABG to Batra Hospital.

5. During the arguments, the learned counsel for the applicant stated that the cheque for Rs. One lac by the Army Hospital, Delhi Cantt., was issued in the name of Batra Hospital. The payment was, therefore, in fact made directly by the Army Authorities to Batra Hospital and the applicant did not come into the picture in so far as this payment was concerned. Although the cheque was handed over to the applicant for being handed over to Batra Hospital. If the charges correctly payable to Batra Hospital for CABG Surgery were only Rs .65,000/-, it was for the Army Authorities to ensure that only this much payment was made to Batra Hospital. Since ^{the} whole amount of Rs. One lack got paid to Batra Hospital, the applicant did not derive any undue advantage or benefit out of the excess payment inasmuch as he did not take any treatment which was in excess of that prescribed, for the purpose for which any extra amount was payable.

6. The learned counsel for the respondents stated that it was for the applicant to ensure that only an amount of Rs .65,000/- was paid to Batra Hospital. He added that the applicant himself asked for a loan of Rs. One lac ten thousand and accordingly a loan of Rs. One lac was sanctioned. It was this amount which was ultimately paid to Batra Hospital having been initially disbursed by the DGNEC to Army Hospital, Delhi Cantt., and having been paid by Army Hospital, Delhi Cantt. to Batra Hospital. Since

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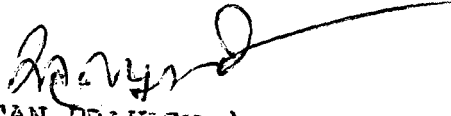
the applicant has given an undertaking to refund any excess amount over the amount prescribed as payable to Batra Hospital, the applicant's liability to refund the excess amount remains.


7. We have heard the learned counsel for the parties and have gone through the records and have also perused the bill of Batra Hospital for the treatment taken by the applicant. It does appear that whereas the charges payable to Batra Hospital were Rs .65,000/-, an amount of Rs . One lac got paid to the Hospital. The respondents have not shown that the applicant took any excess payment or benefit over and above the surgery for which an amount of Rs .65,000/- was payable. It is not also a case where the applicant has retained with himself any amount in excess of Rs .65,000 -. Excess payment seems to have been paid to Batra Hospital in view of the cheque for Rs . One lac issued by the Army Hospital, Delhi Cantt., in favour of Batra Hospital. The applicant cannot be held responsible for this excess payment. Even assuming that the applicant was granted a loan of Rs . One lac in so far as payment to Batra Hospital was concerned, it was the duty of the Army Hospital, Delhi Cantt., to ensure that payment to Batra Hospital was made at the rate prescribed in view of the provisions made in Annexure A-3 dated 28.3.88, which specifies that the charges payable will be the same as approved by the Ministry of Health and Family Welfare for CGHS beneficiaries. Since excess payment seems to have been made to Batra Hospital by the Army Authorities, it is for them to take steps to recover the excess amount from Batra Hospital. The applicant cannot in any way be held

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responsible for this excess payment.

8. We, therefore, do not see any justification for the respondents' action in making attempts to recover this amount from the applicant. Accordingly, Annexures A-1 and A-2 are quashed. The OA is allowed accordingly, with no order as to costs.


(RATTAN PRAKASH)
MEMBER (J)


(O.P. SHARMA)
MEMBER (A)