

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.706/02

Jabalpur, this the 6th day of August, 2004.

C O R A M

Hon'ble Mr.Sarweshwar Jha, Administrative Member
Hon'ble Mr.Madan Mohan, Judicial Member

Francis F.Cecil
S/o Late F.S.Cecil
R/o G-3, Akanksha Apartment
Ahmedabad Palace Road
Kohe-Fiza
Bhopal (M.P).

...Applicant

(By advocate Shri Chetan Kotacha on behalf of
Shri Nilesch Kotacha)

Versus

1. Union of India through
The Secretary
Ministry of Defence
New Delhi.
2. Deputy Director General
Military Farms OMG Branch
Army Headquarters
R.K.Puram, New Delhi.
3. CDA (Medical Branch)
Central Command Lucknow.
4. Director of Military Farms
Head Quarters Central Command, Lucknow.
5. Officer Incharge, Military Farms
Subedarganj, Allahabad.

..Respondents

(By advocate Shri P.Shankaran)

O R D E R(Oral)

By Sarweshwar Jha, Administrative Member

Heard. The learned counsel of the applicant has submitted written arguments and made a copy of the same available to the opposite party.

This OA has been filed by the applicant, a retired supervisor, seeking reimbursement of medical expenses he had incurred for his heart ailment including bye pass surgery in a private hospital - National Heart Institute, New Delhi. He has also prayed for a direction to the respondents to pay interest @ 18% per annum on the amount which is sought to be reimbursed.

2. The applicant is a pensioner and has been staying at Bhopal which has not been brought under the CGHS Scheme ^{when} the treatment ^{had been} availed by him. The applicant, while in service, was a CGHS beneficiary. It is observed that the applicant had approached this Tribunal earlier in OA No.271/2000 which was decided on 17.1.2002 with the observation that the matter required reconsideration by the Government in view of the Govt. of India, Ministry of Health & Family Welfare OM No.S-14025/4/96-MS dated 5.6.98. It was also envisaged that the applicant should send a fresh representation to his employer alongwith a copy of the order of the Tribunal within 4 weeks of the receipt of that order and the respondents would examine the claim of the applicant within the rules relating ^{to} the claim of the pensioners. The respondents did consider the matter in pursuance of the said directions of the Tribunal and have issued a letter to the applicant dated 12th July 2002 (Annexure A). On a perusal of the letter, it is observed that the case of the applicant has not been accepted for three reasons:

- (a) You did not opto for medical coverage under CGHS at the time of your retirement and you were in receipt of fixed medical allowance @ Rs.100 per month.
- (b) GOI, Ministry of Health & Family Welfare OM No.S-14025/4/96-MS dated 5.6.98 quoted in the CAT judgement is not a final order but the same is an internal communication between Department of Health & Department of pension & Pensioners Welfare. CS(MA) Rules, 1944 have not been extended to the Central Government pensioners so far.
- (c) You have not followed the laid down procedure for availing treatment in National Heart Institute i.e. before getting admitted in a private hospital, you did not get the case referred to National Heart Institute by the competent authority which is mandatory in all such cases."

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3. In reply to the above reasons, the applicant has submitted that he could not opt for CGHS at the ^{said} time, as there was no CGHS facility available at Bhopal. He has of course replied to ~~the contentions raised by~~ the respondents in the said letter and the question of his having availed himself the treatment in the National Heart Institute. The applicant has stated that it was because of the heart ailment which required immediate/emergent medical attention and ^{that} he had no time to follow the procedure and ^{could not} ~~obtained~~ permission from the authorities in the matter before he approached the National Heart Institute for treatment where he finally underwent a heart surgery.

4. Reference has been made by the applicant to some of the decisions of Hon'ble courts. Annexure A19 is a relevant decision in this regard. Reference is also made to A-20.

5. It is observed from the reply of the respondents that they have not found the said decisions relevant to the case of the applicant. It is not appropriate on the part of the applicant to claim the benefits as given in the said decisions by ^{the} Hon'ble courts. They have also contended that the benefits given in the said decisions ~~are~~ relevant to Government employees only and not to pensioners and also it was relevant to the applicant concerned and not to other cases, as no general order has been issued in this regard. On a perusal of the order of the Hon'ble Delhi High Court in B.R.Mehta Vs. Union of India & Ors decided on 7.5.99 it is ^{however} ~~observed~~ that a mention has been made in the said decision that a retired government servant is entitled to be treated in Escorts Heart Institute

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& Research Centre for heart ailment or for undergoing by-pass including coronary by-pass surgery and the expenditure incurred has to be reimbursed. Though the said decision of the Hon'ble High Court gives permission to avail necessary treatment in private hospitals, it does not dispense with the procedure as laid down for the purpose.

6. On having perused the submissions by the two sides and particularly that the respondents have given due consideration to the submissions earlier made by the applicant and also in view of the fact ^{that} the Tribunal had earlier given certain directions to the respondents, we find that the applicant was not right in approaching the National Heart Institute for bypass surgery ^{without a reference from the AMA}. As regards the question of the applicant having not followed the procedure as prescribed before he went to the Heart Institute and underwent by-pass surgery, we are inclined to take ^{at the line of treatment} view that the applicant, who is a pensioner and had been residing in a non-CGHS area, perhaps was not familiar with the procedure and hence deserves to be given due allowance for the purpose.

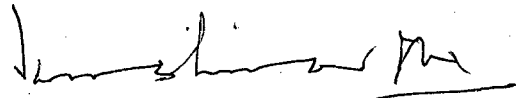
7. Having regard to the entire aspects of the matter and also keeping in view the decision of the Hon'ble High Court of Delhi and the principles enunciated therein, we are inclined to dispose of this OA with a direction to the respondents to reconsider the matter, if necessary, in consultation with the nodal authorities on the subject, the Ministry of Health & Family Welfare, Govt. of India, with sympathy, with reference to the relevant decisions of Hon'ble courts and also in accordance with relevant rules

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and instructions on the subject and dispose of the matter by issuing a reasoned and speaking order within a period of six months from the date of receipt of a copy of this order.



(Madan Mohan)
Judicial Member



(Sarweshwar Jha)
Administrative Member

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संविधि सं. ओ/वर्ग.....

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सूचना एवं आवश्यक कार्रवाई हेतु

उप-निर्देश

Nilesh Kothecha

S. Shankar

Received
on
1-9-04