

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.**

Original Application No. 844/2012

Dated this Tuesday the 17th Day of December, 2013.

Coram: Hon'ble Shri Anil Kumar, Member (Administrative)

Hon'ble Shri A.J. Rohee, Member (Judicial).

Asha Saxena W/o Shri Shushil Saxena, Aged about 55 years, R/o 37/22, Kiran Path, Mansarovar, Jaipur. Presently working as Compiler, Directorate of Census Operation Rajasthan, Jaipur.

.....**Applicant**

(By Shri Anupam Agarwal, Advocate)

V E R S U S

1. Union of India through the Secretary, Ministry of Home, South Block, New Delhi.
2. The Registrar General India, Government of India, 2/A Mansingh Road, New Delhi.
3. The Deputy Director, Office of Registrar General India, 2/A Mansingh Road, New Delhi.
4. The Joint Director, Directorate of Census Operation Rajasthan, 6-B Jhalana Doongari, Jaipur.

.....**Respondents**

(By Shri Mukesh Agarwal, Advocate)



ORDER

Per : A.J. Rohee, Member (Judicial).

1. The applicant approached this Tribunal under section 19 of the Administrative Tribunals Act 1985 seeking direction to the respondents to sanction her claim of Rs. 41751/- towards medical reimbursement for the medical treatment of her daughter.

2. The applicant is working as compiler with the respondents since 1990 at Jaipur. In the night between 08-09.01.2008 the applicant's daughter Sonam suffered from acute abdomen pain with vomiting. She was rushed, Govt. Hospital, Mansarovar, Jaipur where the in-charge Medical Officer advised her immediate hospitalization for necessary treatment. She was, therefore, taken to nearby Dhanwantari Hospital where she was admitted. She was diagnosed to be suffering from acute appendicitis burst. She had also undergone surgical operation there. The applicant incurred Rs. 41,751/- towards the medical treatment of her daughter.

3. After discharge from hospital the applicant submitted application to the respondent No. 4 in the prescribed format seeking medical reimbursement on the ground that the



daughter was required to be admitted for emergent medical treatment. The application was forwarded to the head office New Delhi. The claim was however rejected on 17/08/2009.

Further representations submitted by the applicant for reconsideration of her medical claim dated 20.03.2009, 29.01.2010 and 30.03.2011 were also rejected. Last reply dated 17.11.2011 submitted by the respondents disclosed the reasons for rejection that the applicant being neither CGHS beneficiary nor attached with any Authorized Medical Attendant (AMA) of the area, should have taken treatment for her daughter only in Government Hospital.

4. This impugned order is challenged in this proceeding on the ground that the same is illegally rejected especially when applicant's daughter was required to be admitted in the private hospital under emergency for emergent medical treatment in order to save her life. According to the applicant the provisions of Medical Attendance Rules can be relaxed in case of emergent medical treatment, which was certified by the Medical Officer of concern Private Hospital. Her claim was wrongly rejected by the respondents and as such it is liable to be quashed and set aside.

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5. The respondents vide reply dated 10.05.2013 resisted the application mainly on the ground that the Central Services Medical Attendance Rules 1944 did not permit reimbursement of the claim, since the applicant did not contribute to the CGHS nor was attached to any AMA. In fact on advice by the In-charge Medical Officer Govt. Hospital, Mansarovar, the applicant should have admitted her daughter to the SMS (Sawai Man Singh) Hospital, Jaipur which is a state run hospital where better medical facilities are available. Instead of doing so the applicant admitted her daughter in a private hospital. Although the said hospital is recognized under CGHS, being not beneficiary of the said scheme the reimbursement is not permissible to her for the treatment undertaken in the said hospital. According to the respondents the claim of the applicant was rightly rejected by virtue of the letter correspondence dated 01.05.2008 issued by the Ministry of Health and Family Welfare, Government of India, New Delhi. The applicant's repeated request for reconsideration of her claim was rightly rejected. However since the same was not as per the provisions of the Medical Attendance Rules no relief can be granted to the applicant.

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6. The applicant filed the rejoinder dated 10.10.2013 after collecting certain informations under RTI Act from the respondents.

7. We have heard the oral submissions of the learned Advocates for the parties and have gone through the pleadings, the documents relied upon in support of their rival contentions and arguments advanced before us.

8. The only point that arises for our consideration is whether the impugned order Annexure A/1 is liable to be set aside being illegal or arbitrary exercise of the administrative power vested in respondents? We record our finding in the affirmative for the reasons recorded with issuance of the necessary directions.

REASONS

9. It is obvious from the pleadings of the parties that it is not disputed that the applicant is the Central Govt. Employee working with the respondents and that her daughter was required to be admitted in the hospital for the medical treatment. It is also obvious from the medical certificate issued by the concern Doctor of Dhanwantari Hospital that the applicant's daughter was admitted for emergent medical treatment, since she was suffering from acute abdominal pain

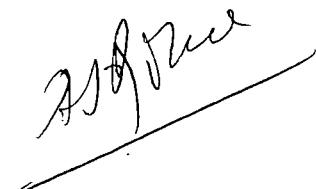
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which was diagnosed as appendicitis burst. She was also immediately operated and was hospitalized from 09/01/2008 to 21/01/2008, for which the applicant has incurred total expenditure of Rs. 41,751/- as per the medical bills towards purchase of medicines and hospital charges, including the charges for surgical operation, nursing, room rent, etc.

10. It is nowhere contended by the applicant that her name is registered for getting benefits of CGH Scheme or that any authorized medical attendant was appointed. It is obvious from record that the office of the respondents No. 3 has considered the request of the applicant for reimbursement thrice. However, the same was rejected mainly relying on the letter dated 01/05/2008 (Annexure R/1) issued by the Govt. of India, Ministry of Health and Family Welfare, New Delhi, under the caption:-

"Clarification for direct OPD treatment at
CGHS recognized hospital in respect of official
staying outside CGHS area under rule 2 (d) of CS
(MA) Rules 1944".

11. The above letter is addressed to the respondents No. 4 by the Under Secretary of the department in reference to his



letter No. D-12016/33/2007-GS dated 07.01.2008. It reads as under :

1. In ordinary course of treatment, no one can take treatment in the CGHS recognize hospital without being referred from any AMA.
2. As per this Ministry OM No. S.14025/46/92-MS Dated 4.2.93, CS(MA) beneficiaries can take treatment from any hospital in emergency cases.
3. In case of prolonged illness, beneficiaries can take OPD treatment in CGHS recognized hospital after taking the permission from Department.
4. There is no such list of the nature and name of disease, which are covered under prolong treatment.
5. An employee, who is neither residing in CGHS area not attached with any AMA, can avail treatment from Government hospitals only."

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12. It is obvious that the respondent mainly relied on clause No. 5 for rejecting the applicant's claim. However, it is not disputed that Dhanwantari Hospital is one of the recognized hospitals under the CGHS, although the applicant is not its beneficiary, since the amount is not regularly deducted from her monthly salary towards contribution to get benefit. It is obvious from record that applicant subsequently applied for registration of her name with the Authorized Medical Attendant.

13. It is thus obvious from record that on the day when applicant's daughter was admitted in the hospital and was discharged after getting the emergent medical treatment, she was neither beneficiary of CGHS nor was registered with any Authorized Medical Attendant of the area. Central Services (Medical Attendant) Rules 1944 contains elaborate provisions for extending the benefits of medical treatment to the Government Servants other than those in Railway Service. Other exceptions are also mentioned under Rule 1 (ii) to which we are not concern. Who can be appointed as Authorize Medical Attendant is also mentioned in rule 2. Appendix-VIII below rules makes elaborate provision for reimbursement of medical claim by relaxation of rules in emergent cases. Since the applicant's claim for medical

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reimbursement is not covered either under the CGH scheme or the Medical Attendance Rules, we have to take recourse to the provisions of clause 1 of Appendix-VIII. It reads as under:

"(1) Procedure for obtaining treatment form private medical institution in emergent cases. -

the question of streamlining the procedure involved in obtaining treatment in emergent case has been engaging the attention of the Government of India and as a result of the decision taken in this regard, the Ministry of Finance in their O.M. No. F.26 (10)-E.V(B)/74, dated the 16th July, 1974* have delegated more financial powers to the Heads of the Departments/Ministries to meet the situation. In consultation with the Finance Ministry, the following further decisions have been taken in this regard: -

(1) Circumstances to justify treatment in private medical institution. - In emergent case involving accidents, serious nature of disease, etc., the person/persons on the spot may use their discretion for taking the

patient for treatment in a private hospital in

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case no Government or recognized hospital is available nearer than the private hospital.

The Controlling Authority/Department will decide on the merits of the case whether it was a case of real emergency necessitating admission in a private institution. If the Controlling Authorities/Departments have any doubt, they may make a reference to the Director-General Health Services for opinion."

14. It is obvious that the illness of the applicant's daughter was diagnosed as of serious nature and as such it can be treated as emergent case. The applicant is therefore justified in admitting her ailing daughter to a private hospital of her choice instead of opting for a government hospital. The Controlling Authority/Department will decide whether it was a case of real emergency necessitating admission in a private institution and in case of any doubt a reference may be made to the Director General of Health Services for opinion. Although the applicant was residing in Mansarovar area and Dhanwantari Hospital which is also recognized under CGHS is also located in the same area, since the applicant was not beneficiary under the said scheme, there will be no

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impediment for her to opt for the same private hospital, since there was emergency. It is obvious from perusal of the Impugned Order (Annexure A/1) that this aspect of the case for relaxation of the rules so as to give benefit of medical reimbursement to the applicant was not considered by the respondents No. 1 to 3.

14. In the result the Impugned order dated 09/12/2011 (Annexure A/1) is liable to be set aside by which the claim for medical reimbursement was rejected. It is accordingly set aside.

15. The respondents No. 1 to 3 are however directed to consider afresh the claim of the applicant in the light of the provisions of Rule 1 of Appendix-VIII of Central Services (Medical Attendance) Rules 1944, sympathetically for relaxation of relevant rules and to pass necessary order, thereon, within a period of three months from the date of receipt of this order and to communicate the same to the applicant.

16. With the above direction the Original Application stands disposed off, however, with no order as to costs.


(Arvind Rohee)
Member (Judicial)


(Anil Kumar)
Member (Administrative)