

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

(Reserved on 02.09.2015)

OA No. 060/00845/2014

Date of decision- // .09.2015.

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

...

Ayoudhia Prasad Duggal son of Sh. Dharam Pal Duggal resident of
House No. 66, Phase 6, Mohali.

...APPLICANT

BY ADVOCATE : Sh. Sanjeev Pandit.

VERSUS

1. Union of India through its Secretary
2. Directorate General of CGHS, Nirman Bhawan, New Delhi.
3. Additional Director, CGHS, 4th Floor, Kendriya Sadan, Sector
9-A, Chandigarh.
4. Fortis Hospital, Sector 62, Phase VIII S.A.S. Nagar Mohali.

...RESPONDENTS

BY ADVOCATE: Sh. A.L. Vohra, counsel for respondent no. 1 to 3.
Sh. Munish Kapila, counsel for respondent no. 4.

ORDER

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

The present O.A is directed against the order dated 31.01.2014 where by the request of the applicant for reimbursement of amount charged over and above the CGHS rates on his medical treatment has been declined.

2. The facts which led to filing of the present O.A are that the applicant retired as Superintendent, Custom and Central Excise Department, Chandigarh on 30.09.2007. Thereafter, he immediately became the member of Central Government Health Scheme (in short 'CGHS') vide Card No. P-4593. The applicant suffered a massive heart attack and was immediately rushed to nearby Fortis Hospital, Mohali which is an empanelled hospital under CGHS. On 03.08.2013, the applicant was informed by the Doctors that he had to undergo Permanent Pacemaker Implantation (P.P.I) and the Doctors advised MRI Compatible DDDR Pacemaker (Permanent). On 05.08.2013, the applicant underwent P.P.I. He was discharged on 08.08.2013. It is the case of the applicant that he was charged a sum of Rs. 1, 24, 500/- by Fortis Hospital i.e. respondent no. 4 despite being member of CGHS. Thereafter, he submitted a representation on 16.09.2013 to respondent no. 3 to reimburse the above amount which he paid to the Fortis Hospital. Again the applicant was hospitalized on 20.09.2013 in

emergency and he underwent CAT +PTCA+Stent to LAD. This time also the applicant paid an amount of Rs. 1, 40, 557/- as patient share over and above the amount paid by the CGHS. Vide another representation dated 28.09.2013, he asked for reimbursement of above amount. When the same was not decided, he served a legal notice dated 29.10.2013. Vide order dated 31.01.2014, his claim has been rejected. Hence, the present O.A.

3. The respondents no. 1 to 3 and no. 4 have filed separate written statement. The contesting respondent no. 1 to 3 admitted that the applicant was admitted in the Fortis Hospital from 01.08.2013 to 08.08.2013 and from 20.09.2013 to 22.09.2013. It is submitted that being a member of CGHS, he was treated in an empanelled hospital and was given cashless facilities. Since, the applicant chosen the pacemaker of a superior quality than the permissible under CGHS and he had also submitted an undertaking to pay additional amount, over and above the amount, as paid by official respondents to the Fortis Hospital under the CGHS, so he is not entitled to any benefit. The amount paid by the applicant for better pacemaker & stent could not be reimbursed under the said scheme, therefore, request of the applicant has been rejected vide impugned order.

4. The applicant has filed rejoinder wherein apart from contradicting the averment made in the written statement, he

submitted that merely submission of undertaking does take away his right to claim the actual amount.

5. We have heard Sh. Sanjeev Pandit, learned counsel for the applicant, Sh. A.L. Vohra, learned counsel for respondent no. 1 to 3 and Sh. Manish Kapila, learned counsel for respondent no. 4.

6. Sh. Sanjeev Pandit, learned counsel for the applicant vehemently argued that impugned order rejecting his claim for reimbursement of the amount paid over and above the amount as admissible under the CGHS is totally, illegal and arbitrary and same is liable to be set aside with a direction to the respondents to reimburse the actual amount. Rightly, the applicant submitted an undertaking but same does not take away his right to get full reimbursement. To buttress his submission, he placed reliance upon the various judgments passed by the Principal Bench of this Tribunal in O.A No. 1430/2011 titled **Gayatri Devi Vs. Govt. Of NCT of Delhi** decided on 03.05.2012, O.A No. 925/2008 titled Dr. **D.K. Jain Vs. Union of India through Secretary** decided on 06.03.2009 and O.A No. 2954/2012 titled **V.B. Jain Vs. Chief Executive officer** decided on 25.07.2013; judgment of the Hon'ble Delhi High court passed in case of **S.R. Sharma Vs. Govt. Of NCT of Delhi** , 2010 (10) AD (Delhi) 595 & **B.R. Goel & Anr. Vs. Union of India & Ors.** 136 (2007) DLT 189; judgment of Hon'ble Supreme Court in case of **Surjiot Singh Vs.**

State of Punjab and Others, 1996 SCC (2) 336 decided on 31.01.1996.

7. Per contra, Sh. A.L. Vohra, learned counsel for contesting respondent no. 1 to 3 submitted that since the applicant had chosen to take a better pacemaker on the advice of the Doctors of the Fortis Hospital, therefore, the extra amount paid by him is not admissible to him under cashless package of CGHS. Moreover, he has also given the undertaking that he will pay excess amount from his own pocket. Therefore, his claim cannot be accepted. Accordingly, the present O.A may be dismissed being devoid of any merit.

8. We have given our thoughtful consideration to the entire matter and perused the pleadings of the parties as available on record with the able assistance of respective counsels.

9. The short Controversy involved in the present O.A is as to whether the applicant is entitled for reimbursement of medical expenses, over and above the admissible amount under CGHS, despite the undertaking to have better quality of pacemaker, than the available under the cashless package or not?

10. A conjunctive perusal of the pleadings make it clear that the applicant, who is CGHS beneficiary was given cashless treatment. He had given an undertaking at the time of admission on 01.08.2013 that he would pay the difference amount between the two pacemakers as

prescribed by the Fortis and one available under CGHS. Being relevant, the undertaking given by the applicant is reads as under:-

- "I have been fully briefed about the guidelines on stents dated 21st February 2013 bearing No. (F. No.Misc. 1002/2006/CGHS(R&H) /CGHS (P)) by the billing staff of Fortis Hospital, Mohali and I have read and fully understood the same.
- I have been explained about the quality of pacemaker used in the procedure and their costs etc.
- I am well aware that there are better quality pacemakers available at Fortis Hospital, Mohali but the same cannot be used on CGHS beneficiaries because of maximum ceiling prescribed in guidelines on stents dated 21st February 2013.
- I hereby give my implicit & unconditional consent and I out of my own free will have agreed for the deployment of pacemaker of higher value than the one prescribed in CGHS guidelines on implants without any guarantees or promises having made to me and / or my attendants.
- I undertake to make the payment of the difference in the amount between the two pacemakers to the Hospital and shall not claim the differential amount from the CGHS authorities or anyone.
- I undertake that I would not pursue the matter of reimbursement of the differential amount in any court of law or hold Fortis Hospital, Mohali liable for the same in any manner whatsoever.
- I have been explained about the procedure and risks and complications associated therewith.
- I have signed this undertaking in a sound and alert state of mind and after reading and understanding its contents fully without any force, pressure, coercion or duress. "

11. Concededly, the official respondents have already paid the relevant amount under the Cashless scheme of CGHS to respondent no. 4. The applicant had directly paid the excess amount to respondent no. 4 which he cannot claim from the official respondents. If he has any grouse, he is at liberty to file a suit against respondent no. 4, if

they had charged from him more amount for the pacemaker than permissible one. It was also advised to him that it is not admissible under the CGHS rates to have better quality of pacemaker, therefore, applicant's request cannot be accepted. It is also held by their lordship of the Hon'ble Supreme court in case of **State Punjab Vs. Ram Lubhaya Bagga** AIR 1998 SC 1703, though the State have an obligation to ensure medical treatment of its employees which may also include reimbursement of expenses that obligation may not amount to a duty to give full reimbursement, since the state does not possess unlimited resources. The state cannot be put under the financial burden if an employee/patient goes for treatment in private hospital of better facility. The relevant para of the said judgment reads as under-

"29. No State of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finance permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India."

12. The judgment as relied upon by the applicant is also not applicable to the facts and circumstances of the present case. In those cases the applicant therein got the treatment from a private hospital

which was not approved under the CGHS. The court held that if in emergency an employee gets the treatment from a private hospital then reimbursement cannot be denied. Even it has also been recorded that if the hospital charged over and above package rates, then same is to be reimbursed and thereafter issue will be sorted out with the hospital. In the present, it was never informed by the applicant that under the CGHS cashless scheme, the official respondents are not treating them or are not implanting the pacemaker. It is the applicant who chose himself to have a pacemaker of better quality by giving an undertaking to pay the excess amount. Therefore, the judgments as relied upon the applicant cannot help him.

13. In the light of the above observations, the present O.A is dismissed being devoid of merits. No costs.

(UDAY KUMAR VARMA)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: // .09.2015.

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