

Central Administrative Tribunal
Principal Bench
New Delhi

T.A.No.20/2013

Order Reserved on: 10.09.2015
Order pronounced on 15.09.2015

Hon'ble Shri V. Ajay Kumar, Member (J)

Chandra Bhan Yadava
S/o Sh. Ganga Ram Yadav
R/o D-48, CDA (Pension) Colony
Dropati Ghat
Allahabad, U.P.

... Applicant

(By Advocate: Sh. Ram Avadh Yadav for Dr. Sumant Bhardwaj)

Versus

1. Union of India
Through its Secretary,
Ministry of Defence
South Block
New Delhi.
2. The Ministry of Personnel, Public Grievances and Pensions
Department of Administrative Reforms and Public
Grievances, through its Secretary
Sardar Patel Bhawan, Sansad Marg
New Delhi – 110 001.
3. The Ministry of Health & Family Welfare
Government of India, through its Secretary
Nirman Bhawan, Maulana Azad Road
New Delhi – 110 011.
4. The Director CGHS
A-545, Nirman Bhawan, Maulana Azad Road
New Delhi – 110 011.
5. Controller General of Defence Accounts
Through its Accountant, Ulan Batar Road
Palam, Delhi Cantt-110 010. ... Respondents

(By Advocate: Sh. Subhash Gosain)

ORDER

The present application has been filed aggrieved by the action of the respondents in not reimbursing the full medical expenditure incurred by the applicant in connection with the Kidney Transplantation of his Son.

2. The applicant is working as Senior Accounts Officer under the respondents and availing the facilities under the CGHS Scheme. As a CGHS card holder, the applicant is entitled for reimbursement of the medical expenses incurred even for his dependent children.

3. During November, 2009, the son of the applicant was referred by CGHS Allahabad to the Nephrology (OPD) of Swaroop Rani Nehru Hospital, Allahabad and who in turn referred the patient to the Indraprastha Appolo Hospital for Kidney Transplantation. The respondents vide Annexure P2 dated 4.01.2010 accorded permission to the applicant for taking treatment of his Son at Indraprastha Appolo Hospital, New Delhi. Accordingly, the applicant's son's kidney was transplanted on 30.01.2010 and in this connection incurred a total expenditure of Rs.6,28,404/-. When the applicant submitted his medical bills for reimbursement of the said amount, the respondents reimbursed only Rs.3,92,713/-, leaving a balance of Rs.2,35,691/- by stating that the applicant is entitled for reimbursement of the medical expenses as per the CGHS approved rates only. Hence, the TA.

4. Heard Shri Ram Avadh Yadav for Dr. Sumant Bhardwaj, the learned counsel for the applicant and Shri Subhash Gosain, the learned counsel for the respondents, and perused the pleadings on record.

5. The learned counsel for the applicant, while submitting that, once the hospital in which the applicant's son underwent the surgery of kidney transplantation, is an approved Hospital under the CGHS Scheme, and that the respondents granted prior permission for the treatment in the said Hospital, he is entitled for reimbursement of full medical expenses incurred by him in the said Hospital in connection with the said treatment, placed heavy reliance on a Judgement of the Hon'ble High Court of Delhi in WP(C) No.4790/2007 dated 09.08.2010 (Annexure P5).

6. The Hon'ble High Court of Delhi in the aforesaid Judgement, after considering the facts in the case which are identical to the facts of this case, and after considering various other decisions of the Hon'ble High Court as well as of the Hon'ble Apex Court and identical OM on which the respondents placed reliance in support of their stand, allowed the said WP. The relevant paras of the said Judgement read as under:

"The question for consideration is whether the petitioner is entitled for the difference in cost of Pacemaker (dual chamber) which has been charged from him by the Apollo Hospital than the rate prescribed in OM mentioned above. The difference claimed by the petitioner is Rs. 29,220/-.

There is no controversy with regard to the amount incurred and spent by the petitioner for the implantation of Pacemaker (dual chamber).

The stand of the respondent is that the petitioner is governed by OM dated 12.06.1996 and has been paid accordingly.

Perusal of record shows that Joint Director (CGHS) had given the permission for Pacemaker (dual chamber) to the petitioner and a letter dated 29.08.2003 in this regard was sent by the CGHS to Medical Superintendent, Apollo Hospital. In the OM dated 12.06.1996, rates are prescribed wherein maximum ceiling in respect of Dual Chamber Pacemaker is fixed at Rs. 1,15,500/-. The petitioner was operated on 29.08.2003. It is a matter of common knowledge that with the passage of time, the rates have gone high. Apollo hospital is also one of the approved hospitals of the Government. Learned counsel for petitioner has also pointed out that petitioner is 80 years of age.

In **V.K. Gupta v. Union of India & Anr.; 97 (2002) DLT 337** petitioner therein was referred to Escorts Heart Institute and Research Centre Ltd. (EHIRC) for the treatment. The Office Memorandum of 18.09.1996 was the subject matter of adjudication and this court had granted reimbursement of full expenses incurred at the EHIRC to the petitioner over and above the rates given in aforesaid O.M. The relevant portion of the aforesaid judgment is as under:-

“The cost of medical treatment has been rising over a period of time and respondents cannot deny the actual reimbursement from a Hospital recognised by them for treatment on the basis of applying the rates as per the previous memorandum which were intended for a period of two years and were subject to revision. Reference is also invited to a decision of a Coordinate Bench of this Court in Civil Writ No. 5317/1999 titled **M.G. Mahindru v. Union of India and Another**, decided on 18.12.2000, wherein the learned Single Bench relying on the decisions of **Narendra Pal Singh v. Union of India and Others**, 79 (1999) DLT 358, as well as **State of Punjab and Others v. Mohinder Singh Chawla etc.**, JT 1997 (1) SC 416, directed reimbursement of the full expenses incurred. In the instant case, it is not in dispute that the said facility or treatment was not available at CGHS or RML Hospital and the petitioner was referred after due permission to a speciality hospital duly recognised by the respondents. The respondents cannot, therefore, deny full reimbursement to the petitioner by placing reliance on an earlier memorandum of 1996 wherein the rates given were applicable and intended for a period of two years on the ground that the said rates have not been revised.”

The court directed reimbursement of full expenses on the treatment.

In **M.G. Mahindru v. Union of India and Another; 92 (2001) DLT 59** wherein it has been held that full reimbursement of medical expenses to a speciality hospital, which was on an approved list of CGHS, cannot be denied to a retired Government servant.

In **K.S. Mathew v. Union of India & Anr.; 122 (2005) DLT 450** wherein also despite restrictive and ceiling

limit fixed by the O.M. to reimburse medical expenses, petitioner was granted full reimbursement for expenses incurred at EHIRC.

It is also the stand of the petitioner that doctor who had implanted the Pacemaker had given a certificate that the Pacemaker implanted was essential one for the proper treatment of the petitioner.

Further, it is not the stand of the respondent that the Pacemaker (dual chamber) of the rate fixed within the ceiling limit was available. Respondents are therefore not justified in not reimbursing the balance amount of Rs.29,220/- to the petitioner.

In view of above discussion, it is held that the petitioner is entitled to the reimbursement of entire expenses incurred by him at the time of treatment. Respondents are therefore directed to pay the balance amount of Rs. 29,220/- to the petitioner within a period of four weeks from today.

Petition is allowed in the above terms with no order as to costs."

7. The learned counsel for the respondents while not disputing that the facts in the present TA are identical to the facts in the aforesaid WP, however, submits that the TA is liable to be dismissed as they have acted in terms of Annexure R1 Circular dated 11.03.1993, which does not permit the reimbursement of expenses incurred in excess of the ceiling prescribed for test/treatment as per the CGHS rates.

8. Since the Hon'ble High Court has considered the identical grounds raised by the respondents while allowing the WP, we are unable to accept the contentions of the respondents.

9. In the circumstances and for the aforesaid reasons the TA is allowed, and the impugned Annexure P4 is quashed and set aside and the respondents are directed to reimburse the balance medical

expenses incurred by the applicant within 60 days from the date of receipt of a copy of this order. No order as to costs.

(V. Ajay Kumar)
Member (J)

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