

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

O.A. No.405 of 2017

Orders reserved on : 19.07.2018

Orders pronounced on : 24.07.2018

**Hon'ble Mr. Justice Dinesh Gupta, Member (J)**

Dr. Om Prakash, aged about 58 years  
s/o Late Deep Chand,  
Ex-Dy. Director, CAPART, New Delhi  
R/o 28A, Pocket-F, GTB Enclave,  
Delhi-110093.

....Applicant

(By Adv. : Shri S.K. Das)

**VERSUS**

1. Union of India through Secretary,  
Ministry of Rural Development,  
Govt. of India, Krishi Bhawan,  
New Delhi-110001.
2. Council for Advancement of People's Action & Rural  
Technology,  
(Under the aegis of Ministry of Rural Development, Govt. of  
India),  
India Habitat Centre, Zone-5A, (Core-C),  
2<sup>nd</sup> Floor, Lodi Road, New Delhi-110003.

.....Respondents

(By Adv. : Shri S.K. Rungta, senior counsel with Shri Prashant Singh)

**ORDER**

The applicant has filed this OA seeking the following reliefs:-

- “A. Quash the impugned Office Order dated 16.08.2016 whereby the Respondent has rejected a part of the claim of the Applicant for medical reimbursement of the expenses incurred in the treatment of his wife;
- B. pass any appropriate order directing the Respondent to pay to the Applicant the balance amount of Rs.61,691/- which has been deducted arbitrarily by the Respondent from the total medical claim of the Applicant; and

- C. Award cost of the present litigation to the Applicant as he has been compelled by the Respondent to approach this Hon'ble Tribunal; and
- D. Pass such further or other orders as may be deemed fit and proper in the facts and circumstances of the case and also in the interest of justice.”

2. The facts, in brief, are that the applicant, who was a permanent employee of the Respondent Organisation, is governed by the Rules and Regulations framed by the Respondent Organisation. However, the applicant is no more in the service of the respondent Organisation since the penalty of removal has been imposed upon him pursuant to disciplinary proceedings initiated against him.

2.1 The applicant is not a beneficiary of the CGHS benefits keeping in view the fact that the employees of respondent Organisation governed by CAPART Medical Attendance Rules, 2000 framed by them. As such all such claims of respondent Organisation seeking medical reimbursement are settled under the provisions of aforesaid Medical Attendance Rules, 2000.

2.2 On 23.10.2015, the applicant submitted an application (Annexure A-2 (Colly)). for grant of medical advance for total knee replacement of his wife (Mrs. Vimlesh), who was diagnosed of suffering from osteoarthritis, rheumatoid arthritis and was undergoing treatment at Indraprastha Apollo Hospital, New Delhi under Dr. (Prof.) Rohini Handa, Sr. Consultant Rheumatologist and Dr. Yash Gulati, MS, MCh (Ortho.), who opined for total replacement of both the knees by an appropriate surgery. While submitting an estimate cost of such surgery as given by the

Hospital, applicant by his said application sought an advance to the tune of Rs.6,80,000/- as against the total estimate of Rs.6,83,791.67.

2.3 The date of surgery was fixed for 16.11.2015 and vide Office Order dated 13.11.2015, the Respondent Organisation transferred a sum of Rs.4,60,000/- as 75% of the total estimate, as advance amount for surgery of the wife of the applicant.

2.4 The wife of the applicant was admitted on 15.11.2015 as an Indoor Patient in Apollo Hospital, Sarita Vihar, New Delhi and on 16.11.2015, she was operated upon for bilateral total knee replacement and remained hospitalized till 21.11.2015 on which date she was discharged after a proper medical and routine check-up.

2.5 As per the advice tendered by the Doctor as mentioned in the discharge summary, the wife of the applicant was advised medicines and physiotherapy with a further advice to consult the Doctor after 3 days. Acting on the aforesaid advice of the Doctor, the wife of the applicant undertook physiotherapy under a registered Physio-Therapist Dr. Jyoti from 23.11.2015 to 25.11.2015 against payment of her fees of Rs.500/- per day. On 26.11.2015, the wife of the applicant went to the Hospital for review as advised and the Doctor upon further check-up, advised her to continue with the physiotherapy for a period of one month and also the medicines. On further advice, the wife of the applicant continued the physiotherapy from 26.11.2015 to 25.12.2015 and also the medicines. Her case was reviewed again on 26.12.2015

and the Doctor advised her to continue with physiotherapy for further period of one month. Accordingly, she re-started her physiotherapy on 27.12.2015 till 26.1.2016. The applicant paid an amount of Rs.500/- per day to the Physiotherapist for the entire period.

2.6 The applicant on 30.12.2015 raised a Medical Claim amounting to Rs.6,66,865/-, i.e., total expenditure incurred in the treatment of his wife as on 30.12.2015 and claimed the reimbursement of balance amount of Rs.2,06,865/- (Rs.6,66,865.00 - Rs.4,60,000.00). The aforesaid claim was followed by another claim submitted on 1.2.2016 claiming a further amount of Rs.16,716/- towards the medical expenses incurred after 30.12.2015.

2.7 However, the respondents vide Office Order dated 15.2.2016, made a payment of Rs.1,54,186/- only out of total claimed amount of Rs.2,23,581/- (Rs.2,06,865/- + Rs.16,716/-) and thereby deducted a sum of Rs.69,395/-. Subsequently, the Respondents paid another cheque in response to the bill submitted on 1.2.2016 paying a consolidated amount of Rs.11.

2.8 Thereafter applicant made another representation dated 22.2.2016, requesting to the respondent for payment of balance amount of Rs.69,395/-. The aforesaid representation was followed by reminders dated 14.3.2016 and 28.6.2016. In response to the said representations of the applicant, the respondent no.2 released a further amount of Rs.7,704/- on 17.6.2016 in reference to Bill

dated 1.2.2016 and in the process denied reimbursement of Rs.61,691/- to the applicant.

2.9 However, the claim made by the applicant through the aforesaid representation dated 28.6.2016 addressed to the Hon'ble Minister, was rejected by the impugned order dated 16.8.2016, whereunder the Chief Accounts Officer of the Respondent Organisation stated the reasons for disallowing the total claim of the applicant but no order of the competent authority has been given to the applicant.

2.10 Feeling aggrieved by the aforesaid impugned order dated 16.8.2016, the applicant has left with no option except to approach this Tribunal for redressal of his grievances.

3. The respondents have also filed their reply in which they have stated that in the case of the applicant only Rs.4,60,000/- was granted as advance after examination of the certificate and estimate submitted by the applicant, as only 75% of the estimated cost of the treatment can be sanctioned as per the rules. The estimate submitted by the applicant was considered upto Rs.6,13,000/- instead of Rs.6,83,791.67 which was already intimated to the applicant at the time of receiving of the advance payment.

3.1 They further stated that as per the discharge summary submitted along with the medical bill, the doctor advised for physiotherapy as advised under expert guidance, Quadriceps exercise only. They further stated that on 26.11.2015, the doctor advised for physiotherapy treatment for one month only without

mentioning the word as "continue" but the physiotherapy treatment has been taken by the wife of the applicant from 23.11.2015 to 14.12.2015 and 16.12.2015 to 25.12.2015 and claimed the physiotherapy charges for 32 days @ Rs.500.00 per visit against the advice of doctor for 30 days, i.e., one month. The respondents have denied that fact of advice of the Doctor to the wife of the applicant to undergo physiotherapy treatment for the said periods. The applicant has claimed the reimbursement of Rs.500/- per day to the physiotherapy for the entire period as alleged. However, the applicant was entitled to the reimbursement of actual physiotherapy @ 200/- per day, which is the approved rate of Moolchand Khairati Ram Hospital. In the present case, since admittedly the wife of the applicant had got the physiotherapy done by Dr. Jyoti of Home Physio Care, which is not a listed hospital/medical facility, rates of Moolchanged Khairati Ram Hospital is applicable which is Rs.200/- per day. The submissions of claims by the applicant for medical reimbursement are not disputed, however, it is submitted that the claims as submitted by the applicant were not in accordance with the approved rates for certain items.

3.2 The respondents further submitted that the respondents paid a total sum of Rs.6,22,182/-, which is the admissible amount in total out of the claimed amount of Rs.6,83,569/-. The said amount was paid to the applicant is as per the prevalent rules, CGHS guidelines and rates applicable to CAPART employees. The respondents have shown the reasons for deduction in the tabulated form which is reproduced as under:-

S.No.	Head	Claimed	Admissible	Reason for deduction
1.	Physiotherapy	Rs.16,000/- (32X500)	Rs.6000/- (30X200)	As per medical rules (Physiotherapy exercise at home) (doctor prescribed only one month physiotherapy)
	Knee Cap	1216/-	991/-	As per medical rule
	-	2600/-	0	2600/- (toilet chain) as per medical rule
	-	500/-	0	500/- (Quadripod stick) as per medical rule
	Knee Replacement operation	640000	600950	39050 disallowed by CAPART on account of restriction of the claim as per the CGHS prescribed rate of knee implant.
	Weigh cuff	250		Rs.250/- not prescribed by the doctor and not reimbursable as per medical rule.
	Tazloc 40 Thronorm-75	234/- 128/-		Medicine not prescribed by the doctor in prescription

3.3 They also stated that since the CAPART Medical Attendance Rules, 2000 do not provide for the admissible charges for knee/hip replacement or any other artificial limbs, the respondents applied the rates applicable for knee replacement in terms of CGHS Rules. They further stated that in the past also where no provision was available in CAPART Medical Attendance Rules, similar approach has been adopted with the concurrence of the competent authority, viz., DG CAPART.

3.4 Lastly, they submitted that the present OA deserves to be dismissed by this Tribunal keeping in view the submissions made in the counter affidavit.

4. The applicant has also filed his rejoinder in which he has refuted the contentions of the respondents and further submitted that respondents have arbitrarily deducted an amount of Rs.70,791/- from the total cost of the treatment of Rs.6,83,791.67 submitted by the applicant. The reasons assigned by the respondents for such deduction is without any basis being contrary to the provisions of CAPART Medical Attendance Rules, 2000 and thus, the impugned order is liable to be set aside and quashed.

4.1 The applicant further stated that claim of charges incurred towards physiotherapy for the periods, as claimed, is made only on the basis of the advice tendered by the Doctor to his wife and as such there is no question of restricting the same to 30 days instead of 32 days. Further so far as the charge of physiotherapy in the Moolchand Khairati Ram Hospital is concerned, the same is charged for the indoor patient who undertakes physiotherapy in the Hospital itself. However, his wife had taken the physiotherapy treatment at her residence, therefore, the said rate of Moolchand Khairati Ram Hospital is not applicable to the case of the applicant.

5. Heard learned counsel for the parties and perused the material available on record.

6. Counsel for the applicant reiterated the facts as stated by him in the OA and further submitted that the respondent – organization framed their own Rules known as CAPART Medical Attendance Rules, 2000 and the same have been approved by the

Executive Committee vide their letter dated March 5<sup>th</sup> 2001. Counsel further relied upon Rules 2.7 and 5.1 of the Rules *ibid* and submitted that according to these Rules, full reimbursement will be permissible in case of indoor treatment in any of the hospital listed in the Office Memorandum dated 18.9.1996. The applicant's wife surgery was performed in Apollo Hospital, which was in the list framed by the Council. The applicant was also granted Rs.4,60,000/- as 75% of the total estimate of operation. When the applicant preferred the reimbursement claim, the respondents rejected certain amounts and items and as such applicant claimed payment of Rs.69,61,691/- which has wrongly been deducted from the applicant's medical reimbursement claim.

6.1 Counsel further submitted that respondents have wrongly deducted an amount of Rs.10,000/- from the physiotherapy bills of the applicant's wife while the applicant who actually paid the said amount towards physiotherapy at home by one Home Physio Care but the respondents have illegally deducted the said amount from his physiotherapy bills.

6.2 Counsel also submitted that respondents have also restricted the claim of operation to Rs.600950/- and disallowed an amount of Rs.39050/- as restriction to the claim as per the CGHS prescribed rate of knee implantation. Counsel submitted that since the respondent – organization has already framed their own medical rules and his case cannot be considered under the CGHS Rules and hence, deduction of the said amount was against the law.

6.3 Counsel further submitted that the respondents have disallowed the purchase of toilet chair, Quadripod Stick and Weight cuff and also they restricted the amount of purchase of one Knee Cap to Rs.991 instead of claimed amount of Rs.1216/-. The respondents have also refused to pay the amount of medicines incurred towards purchase of Tazloc 40 and Thronorm-75 on the ground that the same have not been prescribed by the doctor in the prescription slip. Counsel further submitted that these medicines were taken by the applicant's wife regularly as she is suffering from thyroid, the applicant just added the costs of the said medicines in his medical claim although the same has no concern with the knee operation of the applicant. Counsel further submitted that these medicines were necessary for the applicant's wife after operation as per the advice of the Surgeon. Counsel for the applicant also placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **Shiva Kant Jha vs. Union of India** in Writ Petition No.694/2015 decided on 13.4.2018.

7. Counsel for the respondents submitted that so far as physiotherapy is concerned, Surgeon while issuing discharge slip only prescribed the same for a period of 30 days, any physiotherapy treatment taken by the applicant beyond 30 days was unwarranted and was not prescribed by the Surgeon. Further the applicant's wife had not taken the physiotherapy treatment in the hospital recognized by the Council but had taken physiotherapy treatment at home by some private Home Physio Care. Hence, the amount of physiotherapy treatment was restricted

to Rs.200/- per day as per the prescribed rate of Moolchand Khairati Ram Hospital.

7.1 Counsel further submitted that so far as the total cost of said operation Rs.6,40,000/- is concerned, the same was restricted to Rs.6,00950/- according to the limit prescribed by the CGHS for knee replacement cost. So far as further purchases are concerned, the same are neither part of knee replacement operation nor they are prescribed by the Doctor. As such the respondents have rightly rejected the said claim raised by the applicant's through his medical reimbursement claim.

8. After giving thoughtful consideration to the rival contentions of the parties, we find that it is not disputed that applicant's wife had undergone knee replacement operation in the Apollo Hospital, which is one of the recognized hospitals by the Council. It is also not disputed that the actually the applicant's wife undergone the said operation. In the discharge slip, it is also not disputed that 30 days physiotherapy treatment also prescribed by the doctor to the wife of the applicant. Since the applicant has taken physiotherapy treatment at home by some private Home Physio Care, the amount was restricted to the rate prescribed by Moolchand Khairati Ram Hospital. In this regard, the Rule relied upon by counsel for the respondents is 5.3 of the Rules *ibid*, which is quoted as under:-

“In case of treatment at hospitals other than those listed in para 5.1 above, the rates prescribed by Moolchand Khairati Ram Hospital will continue to be followed.”

Applicant has also replied upon Rule 5.1, which is quoted as below:-

“Full reimbursement will be permissible in case of indoor treatment in any of the hospital listed in the Office Memorandum No.S-11011/16/94-CGHS dated 18.09.1996.”

It is further directed in the said Rule that in case of indoor treatment/package deals admission charges, accommodation charges, ICU/ICCU charges, monitoring charges, operation charges, anesthetic charges, operation theatre charges, costs of drugs and disposable surgical sundries and physiotherapy charges will be payable. Cost of diet telephone charges, TV charges and cost of cosmetics, toiletry tonics and medicines advertised in mass media will not be reimbursement. Thus, in so far as physiotherapy treatment is concerned, the respondents have rightly restricted the claim to Rs.6000/- for 30 days at the rate of Rs.200/- per day, as the physiotherapy treatment taken by the applicant beyond 30 days was not prescribed in the prescription and the knee exercise as prescribed by the doctor has to be carried out by the patient herself at home, which was not at all required to be done under the supervision of the physiotherapist.

9. So far as deduction of amount of Rs.39050/- is concerned, this Court is of the opinion that the respondents have wrongly deducted the said amount from the medical reimbursement claim of the applicant, as referring to the above Rule, it is clear that the applicant is entitled to full reimbursement of operation charges. The respondents have only paid an amount of 75% and restricted the total estimate to Rs.6,00,950 after deducting the amount of Rs.39050/- from the total cost of Rs.6,40,000/- which is not proper. So far as contention of the respondents that there is a limit

prescribed under the CGHS Rules is concerned, the same is not available in the case of respondent – organization, as they have their own medical rules. Thus, the deduction of Rs.39,050/- by the respondents was not proper and also against their own rules and policy.

10. So far as the restricting of cost of Knee Cap from Rs.1216/- to Rs.991/- is concerned, it was also not proper as once they allowed the purchase of knee cap, which is essential for the patient they should have also allowed the actual purchase cost of the said item.

11. So far as purchase of toilet chair, Quadripod stick and weigh cuff is concerned, the same were neither prescribed by the concerned doctor nor were they included in the package. These are certain items, which were purchased by the applicant's wife of her own and, therefore, respondents have rightly not allowed the reimbursement of cost of these items. So far as costs of medicines i.e. Tazloc 40 and Thronor-75 are concerned, the same were taken by the applicant's wife on a regular basis although these medicines were not prescribed by the concerned doctor while issuing the discharge slip as these medicines have nothing to do with the knee replacement operation, however, these medicines applicant's wife regularly consuming, thus, disallowing the cost of these medicines was not proper.

12. So far as judgment (supra) relied upon by the learned counsel for the applicant is concerned, it is true that when a person submitted a medical claim for reimbursement, the

admissible amount must be reimbursed to that person within a reasonable time. But the facts of that case were totally different, as in that case the treatment was taken by the petitioner in a private hospital other than those mentioned in the list of CGHS. While the Hon'ble Supreme Court allowed the said petition and directed the respondents therein to make the payment of treatment to the petitioner therein. However, in the present case, the respondents have already cleared the bills and paid the amount and there is no dispute in respect of hospital where the operation was conducted.

13. In view of the above discussion and for the foregoing reasons, the present OA is partly allowed. The amount of Rs.39050/- + Rs.225/- + Rs.362/- (total comes to **Rs.39,637/-**) have wrongly deducted by the respondents from the medical claim of the applicant and, therefore, the applicant is entitled to the said amount. So far as other items are concerned, the claim of the applicant has been rightly rejected by the respondents. The respondents are directed to reimburse the amount of Rs.39,637/- to the applicant within a period of one month from the date of receipt of certified copy of this Order. There shall be no order as to costs.

**(Justice Dinesh Gupta)  
Member (J)**

/ravi/