

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.3435 of 2016

Reserved on: 14.05.2018
Pronounced on: 28.05.2018

Hon'ble Mr. Uday Kumar Varma, Member (A)

Pramod Kumar Meena age about 33 years
S/o Sh. Dhanna Lal,
Working as Income Tax Inspector,
O/o the Principal Commissioner of Income Tax,
Delhi-9, 2nd Floor,
C.R. Building, New Delhi.
R/o H.No.1372, Mukherji Nagar,
New Delhi. ...Applicant

(By Advocate: Mr. Gaya Prasad)

Versus

Union of India through:

1. Secretary,
Health and Family Welfare,
Government of India,
A-Wing, Nirman Bhawan, New Delhi.
2. Director General of Health Services,
MG II Section, Nirman Bhawan,
Maulana Azad Road,
New Delhi – 110 008.
3. Under Secretary, Govt. of India,
Department of Health & Family Welfare,
Medical Services Section, Nirman Bhawan,
Maulana Azad Road, New Delhi – 110 008.
4. Deputy Secretary,
Govt. of India,
Ministry of Finance, Deptt. Of Revenue,
Central Board of Direct Taxes,
Room No.460, 4th Floor, Samrat Hotel,
Chanakyapuri, New Delhi.
5. Director of Income Tax (Investigation),
ARA Centre, 2nd Floor,
E-2, Jhandewalan Extension,
New Delhi – 110 055.

6. Principal Commissioner of Income Tax,
Delhi-9, 2nd Floor, C.R. Building,
New Delhi. ...Respondents

(By Advocate: Sh. U. Shrivastava)

O R D E R

The applicant, by virtue of the instant Original Applicant filed under Section 19 of the Administrative Tribunals, 1985, has prayed for the following reliefs:-

- i) To call for the records of the case;*
- ii) To allow the O.A. and set aside the impugned orders dated 24.06.2014, 16.09.2014 and 06.10.2015 passed by the Deputy Secretary, Govt. of India, Ministry of Finance, Deptt. Of Revenue, Central Board of Direct Tax, New Delhi, Report of Standing Committee constituted by Directorate of Health and Family Welfare, New Delhi and Under Secretary, Govt. of India, Health & Family Welfare, New Delhi respectively.*
- iii) To direct the respondents to reimburse Rs.6,04,208/- (Rs. Six lacs four thousand two hundred eight only) as medical expenses incurred on the treatment of applicant's son from Govt. Hospital, along with interest @ 18% P.A. from the date of submitted the Medical Bill for Reimbursement.*
- iv) To pass any other order as this Hon'ble Tribunal may deem fit and proper.*

2. The facts, in brief, are that the applicant is working as Income Tax Inspector in the office of Commissioner of Income Tax-6, New Delhi. It is submitted that the applicant was blessed with a son namely Somya Meena, who, since his birth on 30.12.2011, was suffering from Deafness, he was unable to sit without support and was not able to respond to even loud sound. It is further submitted that at the age of nine months, applicant's son felt abnormality

with impaired growth. Therefore, the applicant took his son to a private hospital known as Sai Speech and Hearing Centre, Jaipur on 20.10.2012 where all the required tests were done and for further diagnosis/treatment, the applicant took his ailing son to a private hospital, namely, Santokba Durlabhji Memorial Hospital-cum-Medical Research Institute, Jaipur on 04.04.2013 and in the said hospital essential tests were conducted. Thereafter, the applicant along with his ailing son again visited the Sai Speech & Hearing Centre, Jaipur where the concerned Medical Authority after examination issued a certificate dated 03.08.2013 regarding abnormality of applicant's son. It is further submitted that the applicant along with his son again visited Dr. Mohnish Grover, Assistant Professor of ENT, SMS Medical College & Hospital, Jaipur on 04.08.2013 who, after examination, advised certain other tests to be carried out and the same were got done on 14.09.2013 and 07.12.2013 from Getwell MRI Centre/Poly Clinic & Hospital, Jaipur. Thereafter, the Medical Authority of Sai Speech and Hearing Centre issued a receipt of Rs.3.35 lacs on 07.02.2014. The copies of the prescriptions dated 04.08.2013, test reports dated 14.09.2013, 07.12.2013 and receipt dated 07.02.2014 have been enclosed in this OA at Annexure A-7 (Colly.).

3. The applicant's son further visited ENT Department of Govt., SMS Medical College & Hospital, Jaipur on 19.02.2014 and again, at the advice of the concerned doctor, some more tests were done from Srinath Diagnostic Centre, Jaipur on 23.02.2014. Moreover, the ailing son of the applicant was thoroughly examined in Cardiology Department of Govt. SMS Hospital and Medical Centre, Jaipur on 24.02.2014 and money receipt dated 26.02.2014 for Rs.575/-; Rs.1400/- and Rs.2,00,000/- were also issued by the said hospital and Sai Speech and Hearing Centre, Jaipur respectively.

4. It is contended by the applicant that during the treatment of his ailing son in Govt. SMS Hospital, Jaipur, he came to know that Doctors of the said hospital are going to organize a seminar on the disease of DEAFNESS for Cochlear Implant Surgery of eminent and expert doctors. The applicant along with his son attended the seminar and as the applicant intended to get his ailing son operated upon from the same Govt. Hospital, the date of operation was accordingly fixed as 08.03.2014. At this point of time, the applicant informed his department vide letter dated 03.03.2014 that his son is suffering from Deafness in the ears.

5. It is submitted by the applicant that for undergoing an operation, the applicant's son was admitted in Govt. SMS Hospital and Medical College, Jaipur on 26.02.2014 and after conducting the required tests/investigations, Cochlear Implant Surgery was done on 08.03.2014 to get rid of the deafness being suffered by his son. Post operation, son of the applicant remained in the said hospital and was discharged on 13.03.2014.

6. The applicant submitted medical bill of Rs.6,04,208/- as per the CGHS rates for reimbursement on 12.05.2014 to the respondent no.3 i.e. Director, Income Tax (Investigation Hqrs.), which was forwarded to respondent no.2 on 01.08.2014. The said bill was returned to the Commissioner Income Tax on 07.11.2014 for further approval and sanction of the amount of Rs.6,04,208/- as he, being HOD of the Division, is competent/empowered to sanction the said amount. It is further submitted that the DDO, CIT-9 of Income Tax Department, vide letter dated 21.05.2015, conveyed the ex post facto sanction of the HOD i.e. Commissioner of Income Tax, Delhi-IV with a direction to the Accounts Officer, Field Pay Unit, New Delhi to arrange payment of Rs.5,49,423/- to the applicant towards medical reimbursement incurred by him on the treatment of his son from the funds under the head of

Medical in Financial year 2015-16. However, as contended by the applicant, despite clear sanction order dated 21.05.2015, the respondent no.2 i.e. Director General of Health Services unnecessarily is raising objections on flimsy grounds and is adamant not to reimburse the medical claim of the applicant. The applicant submits that as per the OM dated 20.02.2009, if the Ministry of Health had any doubt, it should have referred back the case to the Income Tax Authority for further verification as they have no authority to reject the claim once it has been duly approved and sanctioned by the HOD. It is the case of the applicant that his medical bill in original was further forwarded to the respondent no.2 i.e. Director General of Health Service for ex post facto permission along with the approval of the Director of Income Tax and to consider the claim of medical reimbursement, a Standing Committee of ENT Specialists under the Chairmanship of Dr. S.K. Sharma, DDG was constituted and the said Committee vide its report dated 16.09.2014 opined as under:-

“Cochlear implant is a planned Surgery, prior permission is to be obtained as per rule, and this case which was put for ex post facto approval does not have the recommendation from two Government Hospitals ENT Specialists along with IQ report. Hence cannot be considered.”

Accordingly, the official respondent vide letter dated 16.05.2016 conveyed the rejection of medical claim of

Rs.6,04,208/- submitted by the applicant quoting the opinion of the Standing Committee of ENT Specialists contained in its Report dated 16.09.2014.

7. The applicant submits that as per OM dated 12.06.2009 dealing with the issue of reimbursement of the cost of cochlear implant to beneficiaries under CGHS/Central Services (Medical Attendance) Rules, 1944, it is provided that the request for Cochlear Implants should be accompanied by complete clinical details and report of relevant investigations as below the independent opinion from two ENT Specialists of Govt. Hospitals undertaking Cochlear Implant Surgery about indications for Cochlear Implant Surgery. The applicant further submits that the recommendations and IQ reports were also obtained though after the surgery was undertaken and submitted to the Department for onward submission of the same to the Standing Committee of ENT Specialists. Though he admits that he could not have the prior permission but that was inadvertent and not intentional or rather it was because of the fact that he was under mental stress for the ailment his son was facing since his birth. However, he had informed the Department about his son undergoing Cochlear Implant Surgery on 03.03.2014 i.e. well before the Surgery which was done on 08.03.2014.

8. Aggrieved by the rejection of medical claim submitted by him in respect of the treatment of his son, the applicant made a representation dated 16.04.2015 to the respondent stating therein that under what circumstances he could not obtain the prior permission from the department and requesting to consider his claim despite the same has been declined by the Standing Committee for medical reimbursement, which is against the rules and causing financial difficulty to him. The applicant has also placed reliance on OM dated 20.05.2009 which provides for relaxation of procedure to be followed in considering the request for medical reimbursement. It further provides that the HOD is empowered to accord ex post facto approval in deserving cases. He further submits that in this case since the HOD has already accorded ex post facto approval, the Director General of Health Service has no authority to reject the claim of the applicant but he is adamant to harass the applicant and has, therefore, rejected his claim in an arbitrary and illegal manner with mala fide intention.

9. The applicant further submits that all the bills for treatment of his son relating to Cochlear Implant Surgery are as per CGHS rates and rules. He also mentioned that as per the ceiling of Cochlear Implant Surgery, the

admissible amount for the above treatment is Rs.5,35,000/- and, therefore, applying the procedure of relaxation and considering the nature of disease and the circumstances under which the Surgery in question was undertaken, the OA deserves to be allowed.

10. The respondents have filed their reply denying the contentions of the applicant made by him in the OA. They have stated that the son of the applicant had undergone Cochlear Implant Surgery for the treatment of deafness in Swai Man Singh Hospital & Medical College, Jaipur (Rajasthan) from 26.02.2014 to 11.03.2014. The claim was examined by the Board. They further averred that since the applicant had not followed the laid down procedure, his medical reimbursement claim along with original documents was returned to DGIT (Investigation) (Admn.), E-2, Jhandewalan Extn., New Delhi vide letter dated 24.06.2014. It is contended that as the Cochlear Implant Surgery is a planned surgery, prior permission has to be obtained before the surgery is undertaken in view of Ministry of Health & F.W's OM dated 12.06.2009 and the reimbursement for Cochlear Implant Surgery is permitted only after the request is approved and recommended by a Standing Committee constituted for the purpose. As the applicant has not followed the laid down procedure, the

medical reimbursement claim submitted by him in respect of his son cannot be processed further and, therefore, the respondents have rightly rejected his claim. The respondents, therefore, pray that in this view of the matter the OA of the applicant may be dismissed.

11. I have carefully gone through the material on record and have heard the arguments advanced by the learned counsel for both the parties.

12. Admittedly, the son of the applicant was suffering from deafness; unable to sit without support; unable to respond to even loud sound; and at the tender age of nine months felt abnormality with impaired growth. The applicant, to save his son started roaming from pillar to post and did whatever the concerned doctors advised him including getting several medical/pathological tests done. It is also seen that during the treatment of applicant's ailing son in Govt. SMS Hospital, Jaipur, a seminar on the disease with which applicant's son was suffering was organized for Cochlear Implant Surgery by eminent and expert doctors which was attended by the applicant along with his son and he was given the date of operation as 08.03.2014 which came as a sigh of relief to the applicant

for his son. This fact was communicated to the Department by the applicant vide his letter dated 03.03.2014.

13. It is not disputed that the son of the applicant was operated upon and Cochlear Implant Surgery was done. It is also not disputed that the bill submitted by the applicant for medical reimbursement in respect of his son was based on CGHS rates and the HOD had already conveyed *ex post facto* sanction for making payment to the applicant under the head of Medical pertaining to financial year 2015-16 and despite that the respondent no.2 rejected the claim of medical reimbursement on technical grounds that the applicant has not followed the due procedure of obtaining prior permission of the Department and recommendation from two Government Hospitals ENT Specialists along with IQ report. The recommendation of two Government Hospitals ENT Specialists along with IQ report was, however, obtained, though post surgery, and submitted to the department for onward submission to the Standing Committee.

14. It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of medical facilities and no fetters can be placed on his rights. It is acceptable to common

sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left for the patient or his relative to decide as to the manner in which the ailment should be treated. The right to medical claim cannot be denied merely on technical grounds but the real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant/patient had actually taken the treatment and the factum of treatment is supported by records duly certified by doctors/hospitals concerned. Once it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement only on the ground that recommendation of the Standing Committee was not obtained forcing the applicant to approach this Tribunal.

15. This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme was propounded with a purpose of providing health facility scheme to the central government employees

so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force. In the facts of the present case, it cannot be denied that son of the applicant was admitted in the hospital and Cochlear Implant Surgery was carried out. Moreover, the law does not require that prior permission has to be taken before the surgery if the survival of the person is the prime consideration. I am also of the view that if the recommendation of the Standing Committee was not obtained, the respondents, being a model employer, could have sent the same after receiving the opinion of ENT Specialists of two Hospitals submitted by the applicant, though belatedly, to the Standing Committee for *ex post facto* approval.

16. The only deficiency in the process of reimbursement of the medical claim submitted by the applicant, I discern, is absence of prior approval of the Standing Committee of CGHS. This denial of approval is essentially based on the fact that the proposal was not accompanied by the opinion of two government ENT experts and a certain IQ report. These deficiencies were made good by the applicant subsequently. It is clear that the denial of sanction was not on merit or on the conclusion that the case did not require

cochlear implantation but merely because a certain procedure was not followed. Further, it is an admitted fact that the claim was in fact given post-facto sanction by the competent authority.

17. I am of the considered view that the CGHS is responsible for taking care of healthcare needs and well being of the central government employees and procedural deficiencies must not come in the way of discharging this responsibility as long as the claim is genuine and claimed as per rules. In the facts and circumstances of the case, I am of the opinion that the treatment of the son of the applicant was genuine, and for technical lapse of prior permission, the reimbursement cannot be denied to the applicant and he, therefore, needs to be reimbursed the medical claim in respect of his son in full. Accordingly, the OA is allowed and the orders dated 24.06.2014, 16.09.2014 and 06.10.2015 passed by the Deputy Secretary, Govt. of India, Ministry of Finance, Deptt. of Revenue, Central Board of Direct Tax, New Delhi and the Report of Standing Committee constituted by Directorate of Health and Family Welfare, New Delhi are quashed and set aside. The respondents are, therefore, directed to reimburse the medical claim of the applicant and make the payment to

him within a period of two months from the date of receipt of a certified copy of this order. No costs.

(Uday Kumar Varma)
Member (A)

/Ahuja/