

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : GWALIOR

Original Application No.202/215/2017

Jabalpur, this Thursday, the 30th day of August, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

D.K. Shrivastava,
S/o Late Shri A.B. Shrivastava,
Aged 52 years,
Occupation Service as Pharmacist in
Bidi Kamgar Dispensary, R/o Bhagat Singh
Nagar, Opp. G.K. Marriage Garden,
Duplex No.17 Nanakhedi
Guna 473001 (M.P.)

-Applicant

(By Advocate –**Shri Alok Kumar Sharma**)

V e r s u s

1. Union of India,
Through the Secretary,
Ministry of Labour Shram
Shakti Bhavan, Rafi Marg,
New Delhi 110001

2. The Directorate General Labour Welfare
Jaisalmer House 26 Man Singh Road,
New Delhi 110011

3. Welfare & Cess Commissioner,
Govt. of India, Ministry of Labour and
Employment, Labour Welfare Organization 797,
Shantikunj South Civil Lines
Jabalpur 482001 M.P.

- Respondents

(By Advocate –**Shri Surendra Pratap Singh**)

(Date of reserving the order:-08.05.2018)

ORDER

By Navin Tandon, AM:-

The applicant is aggrieved by rejection of his claim of medical reimbursement of Rs.3,23,337/-.

2. The brief facts of the case stated in the Original Application are that the applicant is working as a Pharmacist in Bidi Kamgar Welfare Dispensary, Guna. On 01.08.2014 his mother Smt. Laxmi Devi, aged about 70 years, fell from staircase and injured severely. She was immediately taken to local Meenakshi Hospital & Research Centre, Guna. Considering the critical condition the applicant's mother was then taken in Ambulance to Bhandari Hospital, Indore (an empanelled hospital authorized for CGHS employee) in unconscious state and was admitted there on 03.08.2014. She remained hospitalized there till 01.09.2014. The applicant's mother suffered multiple rib fracture, cholelithiasis. She had undergone treatment for which the applicant has paid Rs.3,23,337/-.

The applicant submitted the claim for medical reimbursement to the respondents. The respondents returned the same on the ground that it was not supported with the reference letter of District Hospital, Guna. The applicant filed an appeal to the respondents but the claim remained unsettled. Being aggrieved by the action of the respondents, the applicant filed Original

Application No.202/00683/2016 before this Tribunal, which was disposed of vide order dated 26.09.2016 with a direction to the respondents to decide the appeal-cum-representation of the applicant. In compliance of the said order, the respondents have decided his appeal/representation and rejected it vide order dated 30.11.2016 (Annexure A-1). Hence, this Original Application.

3. The applicant in this Original Application has prayed for the following reliefs:-

“8.1 That, impugned action/order rejecting the claim of medical reimbursement of applicant contained in Annexure A-1 may kindly be quashed.

8.2 That, a direction may kindly be made to the respondents to settle the medical claims of the applicant of Rs.3,23,337/- within a fixed time frame as early as possible and make the payment of the same to the applicant with interest @12% P.A.

8.3 Any other suitable relief which this Hon'ble Tribunal deem fit and proper in the circumstances of the case may also be given to the applicant along with cost of this litigation.”

4. The applicant submits that after admission of her mother on 03.08.2014, he immediately submitted an application on 04.08.2014, seeking permission for treatment. He again sought approval vide his application dated 11.08.2014 along with an emergency certificate and medical estimate provided by the hospital (Annexure A-4). The mother of the applicant remained in Hospital for treatment till 01.09.2014.

4.1 The applicant has stated that in between, when his mother was not getting sufficient relief, she was shifted to Bombay Hospital, Indore on 09.08.2014, but was again brought back to Bhandari Hospital on the very next day, as the Bombay Hospital was not in the list the empanelled Hospital of CHGS.

4.2. The applicant further submits that the respondent No.3 has sought for information about family pension of applicant's mother on 01/04.09.2014 (Annexure A-7) to which the applicant has submitted an affidavit dated 10.10.2014 (Annexure A-8) that her mother is fully dependent on him and she is neither getting any pension nor she has any other source of earning.

4.3 The applicant also states that the respondent No.3 vide letter dated 17/28.03.2015 (Annexure A-10) returned the claim of the applicant for want of referral letter of District Hospital Guna and the list of approved Govt. and private hospitals of Guna.

4.4 The applicant contends that since his mother was critical and required emergency treatment, he was unable to get the referral letter from District Hospital Guna as the Medical Board for referral cases sits twice a week only (Annexure A-11). It has been specifically submitted by the applicant that the condition of District Hospital was quite pathetic and he was not willing to take risk of

life of her mother in critical condition. Therefore, he decided to take her to Indore for better treatment.

4.5 The applicant placed reliance on the OM issued by the Govt. of India, vide Office Memorandum dated 20.02.2008 (Annexure A-19) granting approval for deletion of earlier OM dated 18th /29th July, 1960 regarding treatment in hospitals outside District/State, from CS(MA) Rules 1944. It has been mentioned in the said OM that the Heads of the Department/offices may grant permission to the Central Government Employees and to their family to obtain medical services from any private hospital recognized by CGHS in any city of his choice without TA/DA even if the treatment is available in the same city.

4.6 The applicant has stated that he has not submitted bills of Meenakshi Hospital/Guna and Bombay Hospital/Indore as they are not empanelled hospitals of Central Government.

4.7 Learned counsel for the applicant has placed reliance on the decision of Principal Bench of this Tribunal in the matters of *Yogesh Nirala vs. Union of India* passed in O.A. No.437/2014, wherein the respondents had rejected the claim stating that the applicant's son was suffering from chronic illness and the treatment was not on any emergency basis. The Principal Bench of the Tribunal in the said matter has held that the department should

not take a mechanical and inhuman attitude. Right to life as provided under Article 21 of the Constitution is the most fundamental right and it includes health.

4.8 He also relied on the case of *Sandeep Kumar vs. Union of India and others* (O.A. No.060/00150/2016) decided by the Chandigarh Bench of this Tribunal, wherein also the respondents had rejected the case of the applicant on the ground that no prior permission was sought. The Tribunal directed the respondents to reimburse the cost of treatment as per CGHS rates.

4.9 He also relied on the decision of Hon'ble Supreme Court in the matters of *Shiva Kant Jha vs. Union of India* {Writ Petition (Civil) No.694/2015 decided on 13.04.2018} wherein their lordships have held that the petitioner was taken to hospital under emergency conditions for survival of his life, which requirement was above the sanctions and treatment in empanelled hospitals.

5. On the other hand the respondents have submitted that the applicant has not followed the mandatory provisions of circulars issued by the Govt. of India from time to time. On verification from the record of the hospital it was found that the preliminary treatment was given by Meenakshi Hospital for about three days, thereafter the applicant shifted his mother to Bhandari Hospital on 03.08.2014 and thereafter Bombay Hospital and then again to

Bhandari Hospital at Indore. None of the hospitals mentioned that the applicant's mother was serious in nature. The applicant, without making any reference from earlier hospital, has himself admitted her mother in Bhandari Hospital for treatment. The applicant has not admitted her mother at District Hospital, Guna which is well equipped. Moreover, the applicant at his own request had made his mother discharged from Meenakshi Hospital. The said hospital has not referred the patient to any higher centre or hospital of the district or outside the district.

5.1 The respondents submitted that the applicant admitted her mother to Bhandari Hospital on 03.08.2014 and on 09.08.2014 left the said hospital against medical advice (LAMA) and got admitted her mother at Bombay Hospital on the same day i.e. 09.08.2014 and got LAMA discharged from the said hospital on 10.08.2014 (Annexure A-6). He again got fresh admission of his mother in Bhandari Hospital on 10.08.2014. If the patient was unconscious then normally without any advice of the hospital or reference patient could not be shifted to any hospital till his/her condition be normal. It appears that condition of applicant's mother was not serious and he deliberately or willfully shifted her mother from one hospital to another without any reference to previous hospital.

5.2 It has been submitted by the respondents that as per CS(MA) Rules, 1944 first the patient has to report to government hospital or district hospital and from there the patient has to take reference for any govt. recognized private hospital. The same has not done in the instant case.

5.3 The respondents submitted that the address of the patient mentioned was different at various locations such as in the Meenakshi Hospital it had written Badarwash, District Shivpuri, at Bhandari Hospital it is written as 25-B Srinager extension Indore and at Bombay Hospital it is written Hunuman Colony, Badarwas Distt. Shivpuri. This creates a very doubtful position as to where the applicant resides at the time of incident.

5.4 It is submitted by the respondents that the judgments cited by the applicant are not applicable in the present case.

6. Heard the learned counsel for both the parties and carefully perused the pleadings and documents attached thereof.

7. It is an admitted fact that the mother of the applicant was about 70 years of age at the time of incident. It is also an admitted fact that she fell from staircase and suffered multiple rib fracture and cholelithiasis. The applicant rushed to a private hospital (Meenakshi) for her treatment in emergency to get some immediate relief from the severe pain she was suffering at that time. The

applicant shifted her mother to Bhandari Hospital, Indore, which is an empanelled hospital of Central Government. Bhandari Hospital issued Emergency Certificate stating that patient is suffering from multiple rib fracture, cholelithiasis and is admitted in emergency in ICCU. While issuing the Medical Estimate, it mentioned right rib fracture with right lung collapse. The applicant submitted the application on 04.08.2014 seeking permission for treatment. He had again sought approval vide application dated 11.08.2014 by submitting emergency certificate and medical estimate provided by the hospital (Annexure A-4). But the respondents did not give any response to his applications. In stead of giving permission/approval, on 01/04.09.2014 the respondent-department asked for photocopies of passbook of her mother's (Smt. Laxmi Devi) pension account. However, the applicant submitted his affidavit dated 10.10.2014 (Annexure A-8) stating that his mother is fully dependent on him and she is neither getting any pension nor she has any other source of earning.

8. We find that the respondents' objection that the applicant has not followed the mandatory rules and procedures while taking treatment at another district place is not supported by any rules. It is pertinent to mention that Government of India, Ministry of Health & Family Welfare has already issued an office

memorandum dated 20.02.2008 (Annexure A-19) whereby earlier OM dated 18th / 29th July 1960 regarding conditions for treatment in hospitals outside District/State from CS(MA) Rules, 1944 has been deleted. The said circular allows the Heads of the Department/offices to grant permission to the Central Government Employees and to their family to obtain medical services from any private hospital recognized by CGHS in any city of his choice without TA/DA even if the treatment is available in the same city. However, the said permission was not granted by the respondent-authority to the applicant.

9. As regards the next objection of the respondents that the applicant could have gone to a nearby place like Bhopal, which is nearer to Guna than Indore, we are of the considered view that it is solely on the individual choice to take or give their loved ones the best treatment whether it is concerned for wealth or health. So was the case of the applicant. He has taken his mother to a place (Indore) where he thought better treatments/equipments can be provided for improving her critical condition. The applicant shifted her mother to Bhandari Hospital Indore, which is a recognized hospital for treatment of the Central Government employees and their family members. When he was not satisfied with the treatment at Bhandari Hospital, the applicant shifted her mother to

Bombay Hospital, Indore for better treatment, however, when he found that the said hospital was not a recognized hospital for treatment of Central Government Employees and their family members, he again shifted her mother to Bhandari Hospital on the very next day.

10. As regards the stand of the respondents that the applicant's case does not fall within the category of an emergency case as the mother of the applicant was conscious at the time of admission/shifting in various hospitals, we are of the considered view that the depth of illness cannot be decided merely on the ground of conscious or unconscious state of mind. A person suffering from severe chest pain/heart attack rarely gets unconscious. It does not mean that there is no emergency. The individual has to be given immediate treatment to save his life. As far as the question of emergency in the case of the mother of applicant is concerned, the Medical Superintendent, Bhandari Hospital & Research Centre has issued an emergency certificate wherein it is clearly stated that "*[T]his is to certify that Mrs. Laxmi Devi mother of Mr. D.K. Shrivastav, 70 Yrs. old female and is suffering from Multiple rib fracture, Cholelithiasis, and is admitted in emergency in ICCU in this hospital on 03.08.2018 and under*

treatment.” Thus, we do not find any merit in the stand of the respondents in this regard and accordingly the same is rejected.

11. We find that in the present case by taking a very inhuman approach, the officials of the respondent-department have denied the grant of medical reimbursement to the applicant forcing him to approach this Tribunal twice. It seems that the officials of the respondent-department were more interested in harassing the applicant rather finalizing his claim. The applicant had duly informed about the treatment of his mother immediately after her hospitalization in a recognized hospital and asked for their approval and even submitted an estimate certificate, but there was no response from the respondent-department side during the whole month of August,2014. When the applicant admitted her mother in hospital and requested the respondent for approval of her treatment in recognized hospital, then the respondents asked the applicant to submit photocopies of passbook of her mother’s pension account. All these clearly show a very inhuman attitude on the part of the respondents.

12. The respondents have not cited any judgment or law, in support of their claim, to show the applicant has not followed any provisions of rules and regulations in claiming his medical reimbursement. They have only placed the query asked by the

department from Meenakshi Hospital, Guna, which does not hold any relevance in the case.

13. In the matters of *Yogesh Nirala* (supra) the Principal Bench of this Tribunal has held that the respondents could not have rejected his request for reimbursement of medical expenses incurred by the applicant applying the definition of “emergency” provided in their policy. Right to life as provided under Article 21 of the Constitution is the most fundamental Right and it includes health. The decision of the Tribunal has been affirmed by Hon’ble Delhi High Court in Writ Petition (Civil) No.10157/2015 vide order dated 30.10.2015.

14. Further, in the case of *Sandeep Kumar* (supra) the Chandigarh Bench of the Tribunal has allowed the claim of reimbursement as per the CGHS rates.

15. The Hon’ble Supreme Court in the matters of *Shiva Kant Jha* (supra) has clearly held that before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken 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.

17. Having considered all pros and cons of the matter, as well as the legal position narrated above, we are of the considered view that the impugned order dated 30.11.2016 (Annexure A-1) passed by the respondents rejecting the claim of the applicant is not sustainable in the eyes of law.

18. Accordingly, the Original Application is allowed. The impugned order is quashed and set aside. The respondents are directed to reconsider the claim of medical reimbursement of the applicant and reimburse the cost of treatment as per CGHG rates within a period of one month from the date of receipt of a certified copy of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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