

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH

...

**OA No.290/00219/2016 &
MA No.290/0094/2016**

**Pronounced on : 21.08.2018
(Reserved on : 10.08.2018)**

...

CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)

...

K.K. Agarwal, S/o Shri Sahaj Ram, aged about 65 years, By Cast Agarwal, R/o 524, Vinoba Basti, Sri Ganganagar, Rajasthan. The applicant was retired from the post of Assistant General Manager, B.S.N.L. Office, Sri Ganganagar.

...APPLICANT

BY ADVOCATE : Mr.Kuldeep Mathur.

VERSUS

1. The Bharat Sanchar Nigam Ltd. through its General Manager (Administration), Corporate Office, Bharat Sanchar Nigam Bhawan, Janpath, New Delhi.
2. The Chief General Manager Telecom, Rajasthan Circle, Sardar Patel Marg, C-Scheme, Jaipur.
3. The General Manager Telecom District, Sri Ganganagar, BSNL.

RESPONDENTS

BY ADVOCATE: Mr. Rajesh Shah for R-3.
None for R-1 & 2.

ORDER

...

HON'BLE SMT. HINA P. SHAH, MEMBER (J):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Central Administrative Tribunal's Act, 1985, wherein the applicant seeks the following reliefs:

- "A) It is therefore, most humbly and respectfully prayed that this writ petition may kindly be allowed; and by an appropriate writ, order or direction;
- B) The respondents may be directed to make the payment of the expenses incurred by the applicant for his treatment as per bill from the period dated 08.04.2008 to 18.04.2008 and 22.04.2008 to 29.04.2008 along with the interest @ 18% p.a.
- C) That quash and set aside the letter / communication dated 06.10.2008 (Annexure A1), and letter dated 09.10.2015 (Annexure

A14) passed by respondent may kindly be declare bad in the eyes of law and be quashed and set aside.”

2. The brief facts of the case are as under:-

i) The applicant was initially appointed as Telephone Operator in Department of Telecommunication Service (DOT), which was took over by Bharat Sanchar Nigam Ltd. (BSNL) on 01.10.2000. He was superannuated from the post of Assistant General Manager (AGM) from the respondent Department with effect from 31.10.2011.

ii) While working on the post of Junior Telecom Officer, the applicant got heart attack on 14.01.1987. The attack was so grave that the applicant could not recover from the same and he was constantly suffering with pain, lastly, it was found that he is suffering from Coronary Artery Diseases (CAD). The applicant states that as he was admitted in Sri Ganganagar but it was of no use. Therefore, he went to S.M.S. Hospital, Jaipur, but still he did not get any relief.

iii) The applicant further states that he underwent treatment in Escort Heart Institute and Research Centre (EHIRC), New Delhi and a machine was implanted in his heart named as Automated Implantable Cardioverter Defibrillator (AICD). The applicant states that after the implantation of such device everything was running smoothly but again in September, 2004, the battery of the said AICD became dry. He, thereafter, made an application before Chief General Manager Telecom, Jaipur, seeking for further treatment vide letter dated 03.09.2004 (Annexure A3). Subsequently, on 21.09.2004, a new dual chamber ICD was implanted in the applicant at EHIRC, New Delhi. Again in December, 2007, the applicant started suffering from migration and impending erosion of the device. He was advised to go immediately to undergo device explanation and a fresh implantation (new device) from contra lateral side. As per the recommendation of Dr. T.S. Kler, Head of Department, Cardiology, EHIRC, the applicant immediately filed an application on

06.01.2008 before General Manager Telecom Department (GMTD), Sri Ganganagar, seeking medical advance for treatment. Later on, the applicant also filed another application on 21.01.2008 seeking permission for treatment outside the circle (Annexure A5 (Colly)).

iv) The applicant further states that thereafter on 19.02.2008, the applicant was again advised to undergo device explanation as early as possible for the reason that there was a danger of infection being spread, device malfunction and complications to be created as such (Annexure A6).

v) In the meantime, the applicant was promoted and his pay scale was raised from 11875-17275/- to 13000-18250/-. The applicant, was thereafter, sent for training from 14.03.2008 to 05.04.2008 at ALTTC-Ghaziabad (Annexure A7). In the meantime, the applicant's application dated 21.01.2008 was rejected by Additional Director (MRS) vide its letter dated 04.03.2008 on the ground that there is no rate prescribed in Central Government Health Scheme (CGHS) for ICD implantation. Therefore, he was advised to take treatment from Government Hospital or Government Medical College/Institute (Annexure A1). In the meantime, as the applicant was undergoing training, on the last day of the said training i.e. 06.04.2008, the applicant again started suffering from unbearable pain in his chest and an emergency situation, he was immediately taken to the nearest hospital i.e. EHIRC, New Delhi. The applicant undertook treatment of explanation of migrated AICD from 08.04.2008 to 18.04.2008 covering a sum of Rs.44076/-. After this a fresh AICD (new device) was implanted in the applicant and he was in the hospital from 22.04.2008 to 29.04.2008 and the said expenditure came to Rs.4,14,827/- (Annexure A8).

vi) The applicant, thereafter, submitted his claim for medical reimbursement before the competent authority i.e. General Manager Telecom, vide his letter dated 29.05.2008. His said request was not considered / rejected by the Chief

General Manager Telecom, Jaipur vide its letter dated 06.10.2008 (Annexure A1/A), on the ground that as per the earlier letter dated 04.03.2008, the applicant was not permitted to undergo treatment outside the Circle / State. The applicant states that the permission for treatment outside the Circle was in fact given by the Principal, SMS Hospital, Jaipur, vide its letter dated 06.10.2008.

vii) Aggrieved by the communication received by the respondents, the applicant submitted his claim for reconsideration before the General Manager Telecom, Sri Ganganagar. Thereafter, the applicant submitted his application dated 21.08.2009 along with clarification of Joint Director, CGHS, New Delhi stating that as per the said clarification, it is crystal clear that in case there is no rate prescribed in CGHS, in that case rate of ICD will be considered as per the rate prescribed by AIIMS or G.B. Pant Hospital (Annexure A10). The respondent vide its letter dated 11.09.2009 informed the applicant that the Department has decided to reconsider his case as per the rates prescribed by CGHS/AIIMS (Annexure A11).

viii) Pursuant to the said information, the applicant filed an application on 24.01.2010, before the General Manager Telecom Department, Sri Ganganagar which is also Secondary Switching Area Authority (SSA-Head) and requested to consider his case and recommend the said case to the Circle Office, Jaipur as per the requirement of letter dated 24.11.2006. The said claim of the applicant was again rejected by the Department and the applicant states that the said rejection was not intimated to the applicant as he was not provided with the said rejection copy.

ix) Aggrieved by the action of the respondent, the applicant again filed an application on 02.10.2010 to respondent no.3 for reconsideration of his claim for medical reimbursement. He further states that he personally visited the authorities, but his case was not considered by them. The respondents vide its

letter dated 09.10.2015 had informed the applicant that his case was being sent to respondent no.1 for seeking necessary instructions as the medical claim raised by the applicant falls between the period from 23.04.2007 to 16.04.2010 (Annexure A14).

x) Aggrieved by the action of the respondent, the applicant states that he had no other option but to file the present OA for redressal of his grievance.

xi) The grounds raised by the applicant is that inaction of the respondents for reimbursement of his medical claim is highly arbitrary, illegal and unconstitutional. He states that it is crystal clear that he had no other choice but to undergo treatment on 08.04.2008 at EHIRC since his condition was very serious. The delay in reimbursement of the medical bills is causing undue hardship and financial loss. He relies on the judgment of the Hon'ble Apex Court in case of Shiva Kant Jha Vs. UOI, decided on 13.04.2018. He states that in Shiva Kant Jha's case also he had taken treatment outside the State and his claim was rejected on the ground that CRT-D implant was not required and prior approval for such device implant was not sought. He further stated that in the said case the Hon'ble Apex Court held that CGHS was responsible for taking care of the health care needs and well being of Central Government employee and beneficiaries and though treatment of the petitioner was taken in a non-empanelled hospital it was genuine, and therefore, there was no option left with him at the relevant time and the respondent State was directed to pay the balance amount to the petitioner. He, therefore, further states that the said judgment squarely covers his case, and therefore, he should also be granted medical reimbursement on the same terms.

3. The respondents in the reply dated 10.01.2017 has raised preliminary objection with regard to limitation. He states that the order dated 06.10.2008 was passed by the respondents and the applicant has preferred the present OA in the year 2016 after a lapse of more than eight years. Therefore, the OA

should be rejected on the ground of limitation as there is huge delay on the part of the applicant in approaching this Tribunal.

i) The respondents further state that the applicant undertook indoor treatment without prior permission of circle office, Jaipur and the same was rejected by the circle office, Jaipur vide letter dated 04.03.2008 (Annexure A1). As the applicant was an employee of BSNL, he ought to know the rules and regulations of the Department. The respondents further stated that as per BSNL, MRS policy prior permission is required to be taken for indoor treatment out of circle. The SMS Medical College, Jaipur, had issued permission for taking indoor treatment in EHIRC, New Delhi, as the said particular facility was not available with SMS Medical College, Jaipur, but official permission was also required for claiming such reimbursement which was not granted.

ii) It is further stated that CGHS has allowed beneficiaries reimbursement of ICD at AIIMS, New Delhi or G.B. Pant Hospital, New Delhi rates but it is to state that BSNL management has extended facilities for its employees since 16.04.2010. As the claim of the applicant does not fall within the permissible/effective date, hence, the claim of the applicant for medical reimbursement was denied. The applicant further states that the circle office, Jaipur had decided to reconsider the appeal, but again rejected the same vide circle office letter dated 22.05.2010 on the ground that prior permission was not taken by the applicant and he was communicated vide its letter dated 15.06.2010.

iii) Pertaining to the grounds raised by the applicant, the respondents stated that the orders passed were perfectly valid, legal and in accordance with BSNL rules. It was stated that all the Departments have to work within their rules and regulations and as permission was not granted by circle office, Jaipur and if the applicant takes an emergency treatment, the reimbursement is not allowed of ICD to the applicant as such facility was extended by BSNL since 16.04.2010.

As the claim of the applicant pertains to the year 2008, the respondents have vide its letter dated 09.10.2015 informed the applicant that as his case falls between the period from 23.04.2007 to 16.04.2010, therefore, the case has been referred to the Headquarters, New Delhi along with other required documents, but till date no further reply has been received by respondent no.3 in this regard.

4. Heard Shri Kuldeep Mathur, learned counsel for the applicant and Shri Rajesh Shah, learned counsel for respondent no.3 and perused the material available on record.

5. It is the submission of the applicant that he has sought permission from the Department vide letter dated 06.01.2008 for treating treatment for heart disease from EHIRC, New Delhi and he stated that the doctor had recommended him for heart surgery (ICD and re-implantation). By the said letter he had sought medical advance of Rs.5.6 lakhs as per the estimate given by EHIRC, New Delhi. The approximate cost of such implantation can be found at Annexure A6 submitted by Escorts Heart Institute & Research Centre, New Delhi. He stated that as he was feeling little better, he went for training of two weeks with effect from 14.03.2008 to 06.04.2008 but on the last date of his training i.e. on 06.04.2008 he suffered unbearable pain in his chest and in an emergency situation, he was taken to nearest hospital i.e. EHIRC, New Delhi. He has undergone treatment from 08.04.2008 to 18.04.2008 and the cost of such treatment for explanation of migrated AICD cost at Rs.44076/-. After that a fresh AICD (new device) was implanted in the applicant from the period 22.04.2008 to 29.04.2008 and the total cost of such implantation came to Rs.4,14,827/-. The applicant stated that as per letter dated 06.10.2008, the respondents had informed the applicant that the applicant was not granted permission to take his treatment of ICD re-implantation at EHIRC, New Delhi.

The applicant had stated that it was the department's policy vide letter dated 22.11.1999 to allow ICD implantation to CGHS beneficiaries only in such cases where the request of CGHS beneficiary for ICD implantation or either by Director, CGHS or either G.B. Pant Hospital or AIIMS, new Delhi, on most final advice / recommendation, the CGHS beneficiary can be given permission for getting ICD implantation. The applicant had stated that vide his letter dated 24.01.2010, his case may be recommended and sent to CEO, Jaipur, as he has undergone the procedure of re-implantation of ICD in heart at EHIRC, New Delhi though permission for the treatment was not given due to non-approval of the rates of ICD by CGHS, but as per the clarification submitted by him. The circle office, Jaipur to consider for giving permission and to recommend his case for such treatment inspite of making several communications the respondent vide the letter dated 09.10.2015 stated that as the case of the applicant was for the period from 23.04.2007 to 16.04.2010, they have referred the case to respondent no.1 for seeking necessary instructions but no reply has been received by respondent no.3 in this regard from respondent no.1.

6. The respondents have stated that though BSNL as per the claim for granting medical reimbursement to the beneficiaries of ICD at AIIMS, New Delhi or G.B. Pant Hospital, New Delhi but the said facility has been allowed for its employees since 16.04.2010. As the claim of the applicant pertains to the year 2008, the applicant cannot avail the benefit of the said scheme. It is clear from the communication of the respondents vide letter dated 04.03.2008 that the applicant was not permitted to undergo treatment outside the circle and was informed that he can take treatment at Government or Government Medical College / Institute, in cases where the treatment are not covered by CGHS rates. The applicant was further informed that pertaining to his treatment to be taken at EHIRC, New Delhi for ICD re-implantation, permission has not been granted from General Manager, BSNL. The applicant also was

informed vide letter dated 06.08.2008 as it was informed that as the applicant was not granted permission to take treatment in EHIRC, New Delhi pertaining to ICD re-implantation, therefore, his medical reimbursement claim pertaining to ICD re-implantation from 08.04.2008 to 18.04.2008 amounting to Rs.44076/- and the treatment from 22.04.2008 to 29.04.2008 amounting to Rs.4,14,827/- cannot be granted as the competent authority has not agreed for the said claim.

7. It is undisputed that the applicant has availed the treatment in the year 2008 and the BSNL policy has come into existence since 16.04.2010 but as the claim of the applicant pertains to 2008, the applicant should have approached the Tribunal well within time, he has approached this Tribunal only in the year 2016 as permission was not granted to the applicant vide letter dated 04.03.2008 and 06.10.2008.

8. Pertaining to the judgment given by the applicant in case of Shiva Kant Jha (supra) the same does not cover the present case as the applicant in the said case had immediately approached the Department as well as the Court for redressal of his grievance whereas in the present case the applicant waited for nearly eight years to approach this Tribunal for redressal of his medical reimbursement claim.

9. MA No.290/00094/2016 filed by the applicant for condonation of delay do not find any justifiable reasons for the said delay to be condoned, therefore, it deserves to be dismissed on the ground of delay and laches alone.

10. In the case of Union of India Vs. Harnam Singh (1993(2) S.C.C. Page 162), the Hon'ble Apex Court has held that "the Law of Limitation may operate harshly but it has to be applied with all its rigour and the Courts or Tribunals

cannot come to aid of those who sleep over their rights and allow the period of Limitation to expire.

11. Delay and laches must be explained to the satisfaction of the Court for seeking condonation as held in the case of S.S. Rathore Vs State Of Madhya Pradesh 1990(4) SCC 582, Bhup Singh Vs Union of India & Ors. (1992 A.I.R. S.C. Page 1414), C. Jacob Vs. Director of Geology and Mining & Anr. - 2009 (10) SCC 115 and Union of India & Ors. Versus M.K.Sarkar (2010(2) S.C.C. Page 58).

12. Even on merits, I find no reason to interfere with the impugned order dated 06.10.2008 (Annexure A1) and letter dated 09.10.2015 (Annexure A14).

13. The O.A. is accordingly dismissed with the above observations and MA No. 290/00094/2016 for condonation of delay is also dismissed on the ground of delay and laches alone. No order as to costs.

(HINA P. SHAH)
MEMBER (J)

Dated: 21.08.2018
Place: Jodhpur

/sv/