

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. OA 351/00054/2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

SARELA RATNAM

VS

APWD (A&N)

For the applicant : Mr.P.C.Das, counsel

For the respondents : Mr.S.K.Ghosh, counsel

Order on : 31.9.16.

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. Ld. Counsels were heard and materials on record were perused.

3. The present OA has been filed seeking the following reliefs :

- a) To quash and set aside the impugned office order No. 48 dated 5.2.16 and also the office order No. E-112/ CB/CDI/ APWD/ 2016-17/2016 609 dated 15.3.16 issued by the Executive Engineer, Construction Division I by which the statement of reimbursement of medical claim in respect of the treatment of the son of the applicant to the tune of Rs.14,58,649/- has been rejected on the ground which is not sustainable in the eyes of law and in view of two decision passed by this Hon'ble Tribunal in an identical issue since the case of the applicant has been referred by the G.B.Pant Hospital in Main Land. Therefore, your applicant is entitled to the reimbursement of the medical claim in respect of the expenditure for treatment of his son of amount of Rs. 14,58,649/- along with the interest till the date of actual payment.
- b) To pass an appropriate order directing upon the respondent authority immediately to disburse the reimbursement of medial claim in respect of the treatment of the son of the present applicant of Rs.14,58,649/- in favour of the applicant so that your applicant take proper case to his son who is suffering from blood cancer on emergency basis.
- c) To extend the benefit of the decision as passed by the Hon'ble Tribunal in favour of the applicant after setting aside and quash the impugned office order No. 48 dated 5.2.16 and the order dated 15.3.16.

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4. The facts that could be culled out from the pleadings are as follows :

The applicant is working in the post of Junior Engineer in Andaman Public Works Department (APWD) in the Construction Division No. I at Port Blair. In June 2014 his son was detected suffering from a critical disease of Leukemia (blood cancer) and as there was no specialized doctor or infrastructure in G.B.Pant Hospital, Port Blair, the Medical Superintendent of G.B.Pant Hospital referred the applicant's son to any CGHS recognized hospital at Main Land.

Since CMC, Vellore is one of the CGHS recognised hospital, the applicant admitted his son at CMC, Vellore. For preliminary expenditure, first medical advance of Rs.6,70,000/- was sanctioned vide order dated 3.9.14. The applicant also submitted the first phase medical bill to his department after receipt of such advance on 5.9.14. On 26.9.14 the medical claim submitted by the applicant was returned to him with advice to submit the same in a prescribed medical application form.

In the meantime, on 19.9.14 CMC, Vellore issued an estimated cost of Rs.15 lakhs for the treatment, along with other expenditure and the total revised estimate was made Rs.25 lakhs. The detailed medical bill given by CMC Vellore on 22.1.15 was of Rs.28,09,065/-.

On 12.2.15 the respondents sanctioned an amount of Rs.9 lakhs i.e. 90% of the total estimate expenditure of Rs.10 lakhs in favour of the applicant being the second medical advance. Thereafter on 19.2.15 the Medical Superintendent of G.B.Pant Hospital referred the applicant's son before any CGHS recognised hospital at Chennai. On 27.4.15 the applicant submitted the first phase medical bill in the prescribed form. Thereafter on 30.4.15 the applicant was again referred to the Medical Superintendent of any CGHS recognized hospital, Chennai for treatment of his son. After completion of the preliminary treatment the applicant submitted medical claims of all the phases for reimbursement before the respondent authority on 1.5.15. On 23.7.15 again the applicant's son was referred to Chennai. On 29.12.15 the applicant made a representation before the respondent authorities for settlement of medical reimbursement in

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respect of his son for an amount of Rs.14,58,649/-. Lastly the applicant's son was referred to Chennai on 6.1.16.

After completion of treatment and after submitting the representation for medical reimbursement, an order dated 5.2.16, impugned in the present OA, was issued by the Executive Engineer, APWD, Port Blair, stating that department has agreed to release Rs.4,58,250/- towards the treatment of the applicant's son. Being aggrieved by the action of the respondent authorities, the applicant sent a notice demanding justice on 5.2.16. But by an impugned order dated 15.3.16 the claim of the applicant's medical reimbursement was rejected. Hence the present OA.

5. In their reply, the respondents have averred that the applicant was sanctioned first medical advance of Rs.6,70,000/- by ANIIDCO on 3.9.14 for treatment of his son at CMC, Vellore. The second advance of Rs.9,00,000/- was sanctioned by Chief Engineer, APWD, Port Blair on 12.2.15. The total amount of both advances i.e. Rs.15,70,000/- was been adjusted in the final bill. After completion of treatment the applicant submitted medical reimbursement claim for Rs.30,28,652.49/-. The claim was examined at various levels with reference to CS (MA) Rules, 1944 and CGHS rate. The admissible amount came to Rs.20,25,250/-. Therefore the respondents have agreed to pay the balance sanctioned amount of Rs. 4,55,250/-, on availability of fund.

Consequently the respondents have prayed for dismissal of the present OA.

6. The following admitted facts could be noted in the present OA :

- (i) The son of the applicant was referred to "Any recognised hospital" by G.B.Pant Hospital since he was suffering from Haemagoeitic disorder with viral fever and he was not improving inspite of all possible treatment.
- (ii) CMC Vellore is a recognised hospital in terms of CS (MA) Rules.
- (iii) The respondents have admitted the claim partially but not justified its restriction.

7. The legal proposition in regard to reimbursement could be noted in the following judgments :

- (i) The Hon'ble Apex Court in **Surjit Singh -vs- State of Punjab [1996 (2) SCC 336]** rendered on 31.1.96 in the case of open heart surgery, opined the following :

"The appellant therefore had the right to take steps in self preservation. He did not have to stand in queue before the Medical Board the manning and assembling of which, bare-facedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternate hospital as per policy when the State itself has brought the Escorts on the recognised list, it is futile for it to contend that the appellant could in no event have gone to the Escorts and his claim cannot on that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the appellant remained in India, he could have gone to the escorts like many others did, to save his life. But instead he has done that in London incurring considerable expense. The doctors causing his operation there are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay to the appellant the rates admissible as per Escorts. The claim of the appellant having been found valid, the question posed at the outset is answered in the affirmative. Of course the sum of Rs.40,000/- already paid to the appellant would have to be adjusted in computation. Since the appellant did not have his claim dealt with in the High Court in the manner it has been projected now in this Court, we do not grant him any interest for the intervening period, even though prayed for., Let the difference be paid to the appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs."

- (ii) In **OA 377/08 (Jai Narayan Sharma -vs- UOI & Ors.)** rendered by the Principal Bench of CAT, it was held

"19. To approach a nearest hospital in case of real emergency, which threatens life, is a normal human tendency. One cannot wait for all the methodology and formal procedures to complete before the treatment is administered. What is paramount is that by immediate treatment one's life is saved. The above view was taken by the applicant for his wife and she was admitted to St. Stephens Hospital, New Delhi which was very close to his residence.

20. The way the respondents have dealt with the case of the applicant for medical reimbursement is not only far from reasonableness, sympathy but also cruel to the applicant, as the respondents have not considered the package rates and the entitlement thereof to the applicant in its true perspective and as per their own OM.

21. Resultantly, the OA is allowed. Impugned order is set aside. Respondents are directed to reimburse to the applicant the expenditure incurred by him on the medical treatment of his wife. This shall be done within a period of two months from the date of receipt of a copy of this order. However, they may deduct the amount already paid to the applicant. No costs."

- (iii) **OA 515/11 (Jerom Kujur -vs- UOI & Ors.)** rendered on 26.2.15 by the Jabbalpur Bench of CAT wherein the following order was passed :

"12. In this view of the matter, the competent authority of respondents is directed to re-examine the medical reimbursement claim submitted by the applicant for the treatment in question, while keeping in view that the applicant was admitted in emergency while on temporary duty and the

earlier estimates of Rs.1,75,000/- for treatment at Apollo Hospital Bilaspur were duly approved by the respondents. This exercise, including payment of any admissible amount in excess of what is already sanctioned to him, should be completed by the respondents within a period of two months from the date of communication of this order. In the facts and circumstances of the case, the parties are left to bear their own costs."

(iv) In **Pratap Singh -vs- Director, Subsidiary..... [2007 (2) SLJ 185 CAT]**

rendered on 23.8.06 in a case where the CGHS beneficiary due to a severe heart attack underwent a bypass surgery and remained as an indoor patient incurring an expenditure of Rs.1,50,000/-. His claim was rejected on the ground that CS (MA) Rules were not applicable to retired Government officials.

The Tribunal had held the following :

"I am satisfied that rejection of the claim of applicant, who as a fundamental right to be looked after in the matter of his health and as a consequence thereof to be reimbursed medical expenses incurred to save his life, which has been wrongly denied to him. The OA is accordingly allowed. Respondents are directed to reimburse to applicant full amount of medical claim along with interest at the rate of 6% per annum from the date of submission of the claim till it is actually paid, within a period of two months from the date of receipt of a copy of this order. No costs."

(v) **OA 2345/07 (Zainuddin -vs- UOI & Ors.)** by the Principal Bench where the wife of the employee met with an accident and sustained injuries in head and broken ribs, the respondents were directed to grant full reimbursement as she was taken to a private hospital which was nearest to save her life.

(vi) In the case of **State of Punjab & Ors. -vs- Ram Lubhaya Bagga [(1998) 4 SCC 117]** the Hon'ble Apex Court has held that the State can neither urged nor say that it has no obligation to provide medical facility. If that were so, it would be ex facie violative of Article 21 of the Constitution. While advertng to fixing any rate vis-à-vis an ailment the Hon'ble Supreme Court has observed as under :

"No State of any country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizens including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finances permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India."

(vii) The Hon'ble Apex Court in the case of **State of Rajasthan -vs- Mahesh Kumar Sharma [(2011) 4 SCC 257]** while dealing with the subject matter held that reimbursement of medical expenses cannot be allowed to a Govt. Employee/pensioners de hors the rules or the scheme. IN this verdict, the Hon'ble Apex Court has held in para 8 as infra :

"In this connection it will be profitable to refer to the judgment of a Bench of three Judges of this Court in *State of Punjab & Ors. -vs- Ram Lubhaya Bagga & Ors.* reported in (1998) 4 SCC 117 where the Bench has laid down that the Government would be justified in limiting the medical facilities to the extent it is permitted by its financial resources. In the instant case, the Government has formulated necessary rules permitting the reimbursement of medical expenses in certain situations and upto a certain limit. The Government has been reimbursing the necessary expenditure as permitted by the rules uniformly. It will, therefore, not be proper for a Government employee or for his relatives to claim reimbursement of medical expenses otherwise than what was provided in the Rules."

(viii) In **Daljit Singh -vs- Govt. of NCT of Delhi & Ors. [WP(C) No. 16651/06]** Hon'ble High Court at New Delhi while deliberating this issue held as under :

"This issue of whether reimbursement should be of actual amount or only the package deal amount has been the subject matter of various decisions of this Court. One such judgment is the judgment of a learned Single Judge of this Court in Milap Singh vs. Union of India, 2004(113) DLT 91 wherein three earlier judgments of this Court as also the judgment of the Supreme Court in the case of State of Punjab & Ors. vs. Mohan Lal Jindal, 2001 (9) SCC 217 were referred. Paras 9 to 14 of the said judgment read as under:-

"9. The judgment in V.K. Gupta v. Union of India & Anr., 97(2002)DLT337 is also of a patient treated in the said Hospital. Once again this Office Memorandum dated 18.09.1996 was considered and it was noticed that the rates given in the said Memorandum were to be followed for a period of two years. The Court found that the respondents have to be more responsive and cannot act in a mechanical manner to deprive the employees of their legitimate reimbursement, especially on account of their own failure in not revising the rates after expiry of the initial period. The petitioner was held entitled therein for reimbursement of the full amount.

10. In M.G. Mahindru v. Union of India & Anr. (2001) DLT 59, it has been held that full reimbursement of medical expenses to a speciality hospital, which is on an approved list of CGHS, cannot be denied to a retired Government servant.

11. It has to be appreciated that in cases of emergency like that in the present case, ex post facto sanction can always be granted for specialised treatment. In fact, there is no real dispute in this behalf and the only issue is to the extent of the reimbursement made by the CGHS.

12. *In State of Punjab & Ors. v. Mohan Lal Jindal* (2001)9SCC217, the stand of the Government in refusing to reimburse the in-patient charges for the treatment in the said Hospital was rejected and the Government was held to be under a constitutional obligation to reimburse the expenses since the right to health is an integral to the right to life.

13. The attention of this Court is also drawn to the judgment in CWP No. 6658/2002 titled as 'V.K. Abbi v. Director General of Health Services & Anr.' decided on 04.04.2003 on the same issue. It may be noticed that this judgment has been affirmed in appeal by the Division Bench in LPA No. 480/2003 decided on 19.09.2003.

14. The undisputed position that emerges is that a patient is entitled to reimbursement of the full amount of medical expenses and not only at the rates specified in the circular of 1996 and in case respondent No. 2 has charged a higher rate, than could have been charged, it is for respondent No. 1 to settle the matter with respondent No. 2. The petitioner cannot be deprived of the reimbursement. The observations in para 26 of Prithvi Nath Chopra's case (*supra*) are useful in this behalf, which are as under:-

"26. It can also not be disputed that the Indraprastha Apollo Hospital has been made available land at token amount and it was for the respondents to have settled the amounts of reimbursement at the hospital. If the respondents have any grievance about the quantification of the amounts charged, it is for the respondents to take up the matter in issue with the Apollo Hospital. But that cannot deprive the petitioner of full reimbursement of the amount as charged by the recognised Indraprastha Apollo Hospital. In fact, the petitioner has been compelled to pay the charges first and thereafter reimbursement is taking place while the present policy is stated to be one where the respondents are directly billed by the approved hospitals which policy is salutary since the patient may not at a time have the funds available to first pay the amount and then claim the reimbursement." (underlining added).

4. In view of the above it is no longer *res integra* that merely because the Government does not revise the package deal amount under the Medical Attendance Rules from time to time a person cannot be denied actual medical costs, and there has to be reimbursement of the actual medical expenses incurred.

5. In view of the above, the writ petition is allowed. The respondent No.1 is directed to give medical reimbursement to the petitioner for a sum of Rs.1,41,399/- alongwith interest at 8% per annum simple from the date of filing of the petition till the date of payment. The amount be paid within six weeks. Writ petition is allowed and disposed of accordingly."

(vii) In a similar matter while upholding the decision of Central Administrative Tribunal, Circuit Bench at Ranchi passed in OA 193/06 the Hon'ble High Court of Jharkhand at Ranchi, in WP(S) 5186/09 considered the following decisions : (referred with supplied emphasis for clarity)

i) Division Bench of the Rajasthan High Court in the case of **Bodu**

Ram Jat -vs- State of Rajasthan & Ors. [2006 (5) SLR 705]

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held that such benefit is given for routine medical treatment and it has nothing to do with serious ailment and technicalities should not have been applied by the respondents.

- ii) Judgment of the Hon'ble Supreme Court delivered in the case of **Consumer Education & Research Centre & Ors. -vs- UOI & Ors. [AIR 1995 SC 922]**.
- iii) Delhi High Court judgment delivered in the case of **S.K.Sharma - vs- UOI & Anr. [2002 (64) DRJ 620]**.
- iv) Division Bench judgment of Delhi High Court delivered in the case of **Government of NCT of Delhi & Ors. -vs- Som Dutt Sharma [118 (2005) Delhi Law Times 144]**.
- v) Judgement of the Delhi High Court delivered in the case of **V.K.Jadhari -vs- UOI & Ors. [125(2005) Delhi Law Times 636]**.
- vi) Division Bench judgment of the Punjab & Haryana High Court delivered in the case of **Gurnam Singh Mann -vs- Punjab Agricultural University, Ludhiana & Ors. [2006 (2) SLR 561]**.
- vii) One detailed judgment of the Delhi High Court delivered in **WP(C) No. 889 of 2007 in the case of Kishan Chand -vs- Govt. of NCT & Ors. Decided on 12.3.2010 (unreported)** where the Delhi High Court considered various earlier judgments and thereafter held as under -

"It is quite shocking that despite various pronouncements of this Court and of the Apex Court the respondents in utter defiance of the law laid down have taken a position that the petitioner is not entitled to the grant of medical reimbursement since he did not opt to become a member of the said health scheme after his retirement or before the surgery undergone by him. 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 the medical facilities and no fetters can be placed on his rights on the pretext that he has not opted to become a member of the scheme or had paid the requisite subscription after having undergone the operation or any other medical treatment. Under Article 21 of the Constitution of India, the State has a constitutional obligation to bear the medical expenses of Government employees while in service and also after they are retired.

The Hon'ble Court found -

"In this case, the respondent admittedly is a retired Government employee and he has undergone bypass surgery in a situation where he could not have obtained prior approval from the Government and it is worthwhile to mention here that petitioner's case has already been recommended by the petitioner's department for reimbursement of the bill"

and ordered as follows -

"In view of the above reasons given in the above judgments, we are of the considered opinion that there is no merit in this writ petition as there is no illegality in the order passed by the Tribunal. Therefore, the writ petition of the petitioners is dismissed."

I seek to be guided by the aforesaid decisions and pronouncements.

8. In view of the admitted factual position, and in view of the indisputable fact that the employee was permitted by the respondents to get treatment from a specialised private hospital, which hospital was recognised as per CS (MA) Rules, I am strongly of the opinion that the applicant would be entitled to reimbursement on actual as granted by various Hon'ble Courts in the country in identical situation as enumerated supra.

9. In such view of the matter the OA is disposed of with a direction upon the authorities to release the reimbursement on actuals within two months from the date of communication of this order.

10. No order is passed as to costs.

(BIDISHA BANERJEE)
MEMBER (J)

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