

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00 550/2016

Date of Reserve:25.01.2019

Date of Order: 15.02.2019

CORAM:

HON'BLE SHRI SWARUP KUMAR MISHRA, MEMBER(J)

Sri Banshidhar Sahoo, aged about 64 years, S/o. Late Bhikari Charan Sahoo, Accounts Officer(Retd.), Office of Regional Provident Fund Commissioner, Employees' Provident Fund Organisation, Regional office, Bhavishyanidhi Bhawan, Unit-IX, Janapath, Bhubaneswar-751 022, Dist-Khurda, Odisha, at present residing in Plot No.1228, Shastri Nagar, Unit-IV, PS-Kharvela Nagar, Bhubaneswar.

...Applicant

By the Advocate(s)-Mr.K.C.Kanungo

-VERSUS-

Employees Provident Fund Organisation represented through:

1. Central Provident Fund Commissioner, Employees Provident Fund Organisation, 14, Bhikaji Cama Place, New Delhi-110 066.
2. Regional Provident Fund Commissioner, Employees' Provident Fund Organisation, Regional office, Bhavishyanidhi Bhawan, Unit-IX-Janapath, Bhubaneswar-751 022, Dist-Khurda, Odisha.
3. Regional Provident Commissioner-II , EPFO, Sub-Regional Office, Pabitradiha, N.H.-6, Keonjhar-758 001, Odisha.
4. Asst.Provident Commissioner(Admn.), Employees' Provident Fund Organisation, Regional office, Bhavishyanidhi Bhawan, Unit-IX, Janapath, Bhubaneswar-751 022, Dist-Khurda, Odisha.
5. Director, central Govt. Health Scheme (CGHS), Old A.G.Colony, Unit-4, Bhubaneswar-751 001, Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.S.C.Mohanty

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is a retired employee under the Regional Provident Fund Commissioner, Employees' Provident Fund Organization, Bhubaneswar. In this Original Application under Section 19 of the A.T.Act, 1985 he has prayed for the following reliefs:

- i) ...to quash the orders of rejection under Annexure-A/4, A/6 and A/9 for the ends of justice.
- ii) ...to hold that the applicant is entitled to get the reimbursement of his medical claim bill of Rs.60,947/- for the ends of justice.
- iii) ...to direct the Respondent No.2 to release and pay the medical claim bill of Rs.60,947/- with interest till the actual payment is made to the applicant for the ends of justice.
- iv) ...to issue any other/further order(s) or direction(s) as deemed fit and proper in the circumstances of the case.

2. Brief background leading to filing of this Original Application runs thus: While working as Enforcement Officer/Accounts Officer at Keonjhar under the Respondent No.3, applicant had come to Bhubaneswar in connection with treatment of his wife when he met with an accident on 15.04.2012 near west corner of Ravindra Mandap Square on Sangeet Sudhakar Balakrishna Marg (way to MLA Colony). According to him, an unknown person driving a motorcycle dashed him as a result of which he fell down on the road and sustained head injury causing bleeding and multiple fracture of his left leg. Immediately, the public took him to Kar Hospital at Unit-4 which is approximately 200 meters from the spot. After the required treatment, the Doctors in Kar Hospital advised for a CT scan to detect the reason of bleeding and since the said facility was not available in Kar Hospital, the applicant on the very day was taken to Neelachal Hospital at Unit-3 which is nearby Kar Hospital. However, the applicant was discharged from Neelachal Hospital on 15.04.2012.

3. Grievance of the applicant is that medical reimbursement claim to the tune of Rs.60,947/- preferred by him on 16.05.2012 was not settled and while the matter stood thus, he retired from service on 31.10.2012. On

28.08.2013 (A/4) applicant was communicated with a letter rejecting his medical claim on the following grounds.

- i) The treatment has not been undertaken in Govt. Hospital or referral Hospital as per CS(MA) Rules, 1944. It is observed that the treatment has been obtained in a Private Hospital.
- ii) The patient has not been referred by AMAs/Govt. Hospital to Private Hospital.
- iii) Emergency Certificate for treatment in private Hospital has not been submitted.
- iv) Distance between accident spot to the nearest Govt. Hospital and Private Hospital where he was admitted has not been mentioned.
- iv) No request for consideration under relaxation provision of CS(MA) Rules has been made.
- v) The discharge certificate says that when the patient came to Neelachal Hospital he was conscious".

4. On receipt of the above, the applicant submitted a representation dated 15.11.2013 (A/5) to the Regional Provident Fund Commissioner, Odisha, Bhubaneswar replying to the grounds based on which his claim for medical reimbursement had been rejected as under:

- i) It was a case of road accident. I had sustained fractures on my left leg and was unable to stand. I was almost lying on the road. With the help of some of the generous public I was taken to the nearest Private Hospital Kar Clinic & Hospital then shifted to Neelachan Hospital due to non-availability of scanning facilities in the Kar Hospital for emergency treatment and care. Hence the question of taking treatment at any Govt. Hospital in the circumstances was beyond any choice.
- ii) In the circumstances explained above the question of referring the case by the AMA for treatment in a Private Hospital could not come in between or I was an occasion to do so.
- iii) An emergency certificate obtained from the Hospital Doctor necessitating immediate treatment is enclosed for information and needful.
- iv) As regards distance from the accident spot to Govt. Hospital and the Private Hospital, I am to state that the Private

Hospital where emergency treatment was undertaken was nearer than Govt. Hospital.

- vi) In the claim forwarding letter I had made a request to consider my treatment at Private Hospital. However, I once again request the favour of the RPFC to take into consideration such emergent treatment taken in a Private Hospital in relaxation of normal rules and make payment of the claim.
- vii) It was an accident case where I had sustained multiple fracture in my left leg necessitating immediate treatment to save further deterioration of condition of the patient. Hence conscious or unconscious stage of the patient is not a factor for getting emergent treatment.

5. While replying so, the applicant also made a prayer to consider reimbursement of medical claim in relaxation of CS(MA) Rules, 1944. In response to this, vide communication dated 31.01.2014 (A/6) applicant was intimated as under:

“Your representation dated 15.11.2013 for reimbursement of medical expenses is re-examined and the same is not considered”.

6. Thereafter, the matter was taken up by the Employees Provident Fund Organisation Retired Employees' Association, followed by successive representations submitted by the applicant, when vide communication dated 30.03.2016(A/9) the applicant was intimated that there was no reason to further review the matter as the claim has already been rejected by the competent authority. Aggrieved with this, the applicant has filed the present O.A. seeking relief as referred above.

7. The main thrust of the O.A. is that the medical reimbursement claim has been rejected by the respondents without due application of mind and without adhering to the provisions the CS(MA) Rules, 1994, governing the subject.

8. Opposing the prayer of the applicant, respondents have filed a detailed counter. Respondents have submitted that the medical reimbursement claim of the applicant was rejected vide communication dated 28.08.2013 (A/4) on the grounds which have already mentioned above. On receipt of the same, the applicant submitted a representation mentioning the reasons for admission into the Private Hospital for treatment with a request to reconsider his request in relaxation of CS(MA) Rules, 1944. Since the explanation offered by the applicant did not satisfy the provisions and the authority considering relaxation under CS(MA) Rules, a rejection order was communicated to him vide letter dated 21.1.2014. According to respondents, once the claim had been rejected by the competent authority, subsequent reminders on the same subject are of no use. The Respondents have pointed out that as per CS(MA) Rules, submission of Emergency Certificate is required to ascertain the situation/condition of the patient admitted in the Hospital. They have also pointed out that non-mention of distance between the accident spot and the Government hospital and to the private hospital is very much required as provided in the CS(MA) Rules. Drawing attention to Appendix-VIII of CS(MA) Rules, 1944 on the subject of reimbursement of medical claims in relaxation of rules in emergent case, the respondents have quoted the relevant provisions as under:

“Circumstances to justify treatment in private medical instructions – In emergent cases involving accidents, serious nature of disease etc., the person/persons on the spot may use their discretion for taking the patient for treatment in a Private Hospital in case no Government or recognized hospital is available nearer than the private hospital. The Controlling Authority/Department will decide on the merits of the case whether it was a case of real emergency necessitating, admission in a Private Institution. If the Controlling Authorities/Departments have any doubt, they may make a reference to the Director General of Health Services for opinion”.

9. Respondents have admitted that the applicant met with an accident and was brought in an unconscious condition to Kar Clinic & Hospital, Unit-IV, Bhubaneswar which is nearer to the accident spot. The attending physician of Kar Clinic advised for a CT Scan of the brain, but the applicant was not referred to any specific hospital for scanning and was taken to M/s.Neelachal Hospital and was admitted in the said Neelachal Hospital. They have pointed out that Capital Hospital, Bhubaneswar is actually 1.2 kms. away from the accident spot which is nearer than M/s.Neelachal Hospital and as per rules, CT Scan could have done in the Capital Hospital and if the said facility would not available, then the patient could have admitted to M/s.Neelachal Hospital. No such procedure has been followed in the instant case. As per Discharge Certificate of M/s.Neelachal Hospital the applicant was conscious at the time of his admission on 15.4.2012 and advised hospitalization for further investigation and treatment. The Certificate issued by M/s.Neelachal Hospital discloses the emergency of the treatment and operation. According to respondents, since proper procedure had not been followed, the claim preferred by the applicant was rejected.

10. We have heard the learned counsels for both the sides and perused the records. We have also gone through the rejoinder and the written notes of submissions filed by both the sides. We have also gone through the decision of the Hon'ble Supreme Court in Shiva Kant Jha vs. Union of India in Writ Petition (Civil) No.694 of 2015) decided on 13.04.2018, cited by the applicant in support of his claim. The applicant therein was a CGHS beneficiary having a CGHS card and his medical claims for treatment in the Fortis Escorts Hospital, New Delhi having not been reimbursed under the Central Government Health Scheme, the applicant had approached the Hon'ble Supreme Court under

Article 32 of the Constitution of India. Since the applicant in the instant case is not a CGHS beneficiary and the facts and circumstances of this case are not identical to the facts of the case before the Hon'ble Supreme Court in Shiva Kant Jha (supra), the ratio decided therein is not applicable to this case.

11. Incidentally, the Tribunal has gone through the CS(MA) Rules, 1944 on the subject of "Charges for treatment in private hospitals", the relevant part of which reads as under:

"(11) Reimbursement of charges for various treatments/examinations taken in private recognized hospitals under CS (MA) Rules, 1944 – The Ministry of Health and Family Welfare have been receiving references from various Ministries/Departments regarding the regulation of claims on account of charges of various treatments/examinations undertaken in *private hospitals recognized or otherwise under the CS(MA) Rules*, with reference to the charges of Government hospitals for which comparative charges are not available due to the non-availability of such facilities.

2. It has now been decided by this Ministry that the claims for reimbursement of charges of treatment/examinations etc., for which corresponding rates are not available in the nearest Government hospitals for regulating such claims may be reimbursed without referring them to this Ministry/Directorate General of Health Services by the concerned Ministries/Departments by (a) *restricting such claims to the rate of Government hospitals in the concerned State, and (b) where such rates/facilities are not available in the concerned State, full reimbursement of such charges may be made, provided the Director of Health Services of the concerned State certifies to that effect*".

[G.I., Min. Of Health and Family Welfare, OM No.S.14021/5/88-MS dated the 17th October, 1988].

12. From the above, it is quite clear that there exists provision for reimbursement of medical claims in respect of treatment undergone in private hospital. In the facts and circumstances of the case, the Tribunal is satisfied that there existed a case of emergency which necessitated the applicant to avail treatment from the private hospital. Therefore, the

rejection of the claim of the applicant for medical reimbursement is unreasonable and improper. In view of this, the impugned communication dated 30.03.2016(A/9) is quashed and set aside. Consequently, the respondents are directed to reconsider the matter in the light of the provisions mentioned above and pass appropriate orders within a period of three months from the date of receipt of this order.

13. In the result, the O.A. is allowed as per the direction made above. No costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

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