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**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A. No. 176/2018

Date Of Decision: 05th April, 2019.

CORAM: R. VIJAYKUMAR, MEMBER (A).

Smt. Bina Saxena, Age: 72 years,
W/o Late Ravendra Kumar Saxena,
Age: 75 years,
(R/at: C2/302, Kumar Shantiniketan,
Pashan Sus-Road, Pashan, Pune- 411 021.

...Applicant.

(By Advocate Shri S P Saxena)

Versus

1. Union of India,
through the Secretary,
Ministry of Health, Nirmal Bhavan,
New Delhi- 110 011.
2. The Addl. Deputy Director General,
Directorate General of Health Services,
Nirman Bhavan, New Delhi- 110 011.
3. The Addl. Director,
C.G.H.S., Swasthya Sadan,
2nd Floor, Mukund Nagar, Pune- 411 037.

...Respondents.

(By Advocate Shri B K Ashok Kumar)

*Reserved on : 25.03.2019
Pronounced on : 05.04.2019*

ORDER

This application has been filed on 09.02.2018 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a) To allow the application.

b) To direct the Respondents to reimburse the balance amount of entire medical expenses of Rs. 3,78,986/- incurred by the Applicant for the medical treatment of her husband done at Govt. approved Ruby Hall Clinic, Pune, for which the medical bill has already been submitted by the Applicant on 24.05.2016 in terms of C.S. (M.A.) Rules, 1944 applicable to the Applicant.

c) To grant 12% interest on the balance amount of Rs. 3,78,986/- which has not yet been paid towards the medical reimbursement, since it is over 1½ years since the claim was submitted by the Applicant to the Respondents.

d) To pass any other order which may be just and equitable in the facts and circumstances of the case.

e) To award the cost of application."

2. The applicant is the spouse of a Central Government Pensioner who had retired from service in 2001 and had enrolled in the CGHS Scheme with Beneficiary I.D. No. 1840000. The patient (applicant's husband) had obtained admission directly with the Ruby Hall Clinic (Pune) which is an empanelled hospital of the CGHS and is stated to have Cancer treatment facilities. The patient

obtained admission on three occasions in 2016 as under:

"1. Under registration No. 1601147 - 14.01.2016 to 02.02.2016 under Mediclaim Category.

2. Registration No. 1603601 - 12.02.2016 to 19.02.2016 as CGHS paying.

3. Reg. No. 1604653 - 24.02.2016 to 09.04.2016 as CGHS paying - Expired with total Bill Rs. 13,36,344/-."

3. It is stated that the patient developed acute pain in his urinary bladder on 24.02.2016 at his residence and was rushed as an emergency case to the Ruby Hall Clinic for indoor treatment and was subsequently diagnosed as suffering from Cancer of the Bladder. No evidence has been provided of any treatment that had been sought from the CGHS Wellness Centre where he was enrolled. It is also stated that the patient was directly admitted in the Ruby Hall Clinic as an emergency case without prior approval or intimation to the CMO of the CGHS Wellness Centre until the time of presentation of medical reimbursement bill on 24.05.2016

subsequent to demise of the patient. This bill was a claim for the third admission period from 24.02.2016 to 09.04.2016 amounting to Rs. 13,47,879/- which included Indoor Treatment of Rs. 12,05,857/- and Tests/Investigation of Rs. 1,42,022/-. The respondents scrutinized the claim and obtained approval of respondent Nos. 1 & 2 for payment of Rs. 9,68,893/- which was disbursed to the applicant vide their letter No. F.No. 12022/27/2016-CGHS-III dt. 24.08.2017. The applicant argues that the patient was admitted as a medical emergency case in a duly empanelled hospital on 24.02.2016 at 5:45 PM and passed away on 09.04.2016 at 7:30 AM and was treated for Bladder Cancer as an indoor patient by the hospital which is a specialized provider for cancer facilities. The indoor treatment was necessary for conducting various tests and the patient passed away due to multiple organ failure. Against her total claim, a sum of Rs. 3,78,986/- has been denied and she seeks reimbursement considering the circumstances

of the matter. No details of the patient's previous case history and evidence of treatment at CGHS or at the hospital has been provided by the applicant.

4. The applicant argues that since the Ruby Hall Clinic was an empanelled hospital with specialized facilities for Cancer treatment and in view of the various orders of Courts and Tribunals that in an emergency, the employee can directly proceed to the nearest hospital for treatment, the applicant's husband had to be rushed to the nearest empanelled hospital which was done in the present case. The applicant has also enclosed as Annexure A-1, a certificate given by a consultant (signature: illegible, name: unknown) of the Ruby Hall Clinic dt. 07.05.2016 which was well after the demise of the patient stating that the patient was admitted in the hospital in emergency on 24.02.2016 as a CGHS Pensioner with CKD Ca (Bladder). As part of the Death Certificate, she has also enclosed a death summary which records the patient's admission

on 24.02.2016 at 5:45 PM and death on 09.04.2016 at 7:30 AM with a clinical provisional diagnosis of Urinary Bladder Ca with CKD. The brief history of the patient is noted as low urine output, altered consciousness and low appetite and the condition of the patient at the time of examination is noted as "Conscious and Oriented". The cause of death is noted as multi organ failure in relation to Cancer of the Urinary Bladder with CKD.

5. The respondents in their reply stated that there are nine CGHS Wellness Centres, one Polyclinic, three Pathology Laboratories, an X-ray Unit and an Ultrasound Unit at Pune and 48 Medical Officers including Medical Specialists of Radiologists, Oncologists etc. They state that by becoming a member of the CGHS, the applicant was entitled to receive services through its Wellness Centres, Polyclinic and specialists wherever certain facilities were available. They state that the applicant has suppressed facts and made misleading statements and

misrepresentations. They urge that the key function of CGHS is to provide comprehensive medical care facilities to Central Government employees and pensioners free of cost and not for settling medical bills for the medical expenses incurred on account of medical treatment taken privately on one's own accord. Therefore, reimbursement cannot be claimed as a right, when the Norms/Rules/Regulations of CGHS are not followed and/or are not adhered to. They further state that the applicant's residence was four kilometers from the CGHS Wellness Centre-II which he had to pass for going to the Ruby Hall Clinic located 12Kms from his residence. If he had visited the Clinic, he would have obtained necessary treatment and been referred to the empanelled hospital which included the Ruby Hall Clinic for the relevant period and up to November 2016. They state that the applicant neither approached CGHS for admission memo nor informed the authorities of Ruby Hall Clinic that he was a CGHS pensioner and got himself

admitted in the Ruby Hall Clinic as a self-paying private patient. They enclose a copy of an email dt. 25.07.2017 received from the Ruby Hall Clinic in reply to their email dt. 24.07.2017 (Exhibit R-I). They also state that the patient was admitted three times for indoor treatment and every time, the patient opted for the treatment as a private patient and further, that on both the second and last admission, the Ruby Hall Clinic has clarified that he was not admitted as an emergency cases. The CGHS rules enable beneficiaries to go directly to private hospitals only in emergency cases and non-emergency cases need to go through the CGHS in order to obtain treatment including cashless treatment. Despite these circumstances and despite overlooking the aspect of whether the case was of emergency or non-emergency, the applicant was reimbursed Rs. 9,68,893/- after approval of the Ministry. They insist that the applicant was required to consult the doctors at the Clinic prior to seeking free indoor treatment in the CGHS empanelled

hospitals. They also state that the medical reimbursement claim was received on 24.05.2016 and since it exceeded Rs. 7 Lakhs, it had to be referred to the Ministry of Health & Family Welfare, New Delhi and after sanction, the entitled amount was remitted to the bank account of the applicant on 07.09.2017. They urge that if every CGHS patient decides to straightaway approach the empanelled hospitals and take treatment from the doctors and specialists there, the whole purpose of maintenance of Medical Officers by the CGHS will be defeated.

6. The applicant has insisted that the applicant's husband (patient) was rushed to the Ruby Hall Clinic in a state of semi-consciousness and under emergency conditions as he was suffering from acute unbearable pain. The admission took place at 5:15 PM at evening hours when no doctors were available in the CGHS Wellness Centre. On the reference made by the respondents to the email reply of Ruby Hall Clinic, they deny the claim of the respondents stating that the

Ruby Hall Clinic itself had stated in the email that the patient was admitted on 24.02.2016 and treated as a special case and put under CGHS paying patient category which is also recorded in the bills. They also reiterate the relevance of the emergency certificate issued by the consultant doctor of the hospital. They rely on the rulings of the Hon'ble Apex Court **in Shiva Kant Jha vs. Union of India [2018 SCC Online SC 370] in W.P. (C) No. 694 of 2015 decided on 13.04.2018** where the Hon'ble Apex Court had laid down that in case of medical emergency, the citizens can rush and avail medical treatment in any hospital and full reimbursement of expenses has to be allowed. They also rely on the judgment of the Hon'ble Apex Court **in Suman Rakheja vs. State of Haryana & Anr. [(2004) 13 SCC 562] in C.A. No. 5060 of 2004, decided on 06.08.2004** where the Government servant was rushed to a hospital in emergency and it was held that his widow would be entitled to refund of 100% medical expenses at AIIMS rates and 75% of expenditure in

excess of that amount. They also rely on the decision of this Tribunal in **Shri Arun Kumar Chavan Vs. Union of India & Ors. in OA No. 645 of 2017, decided on 31.08.2018** where the patient was rushed as a emergency with

Myocardial Infarction requiring Angio, PTCA with stent and the respondents were ordered to settle the bill of the applicant along with interest. With this rejoinder, the applicants have also enclosed a bill dt. 09.04.2016 which mentions that the applicant was in the category of CGHS paying patient.

The applicants have also referred to the O.M.

No. Z.15025/51/2018/DIR/CGHS/EHS dt.

06.06.2018 issued by the Department of Health & Family Welfare which followed the directions of the Hon'ble Apex Court in Shiva Kant Jha (supra) to set up Committees to process reimbursement claims in different categories and urge that this was a non-High Power Committee case which should have been fully reimbursed.

7. During the final hearing, learned counsel for the applicant reiterated the

contents of the pleadings. The learned counsel for the respondents emphasized with reference to the Para 4.3 of the OA that the person was not unconscious. He sought to distinguish the case of the applicant as a chronic condition versus cases of heart attack where the patient had to be rushed to a competent medical provider. He also invites attention to the fact that the patient had engaged in several treatments, none of which had been reported to the CGHS. All the citations of the applicant relate to emergency cases which is not the situation with the patient in this present cases which could have and should have gone first to the CGHS Wellness Centre.

8. The learned counsel for the applicant in rebuttal denied the averments of the respondents that the patient's case was not an emergency and that immediately upon admission, he was taken to the CCU and thereafter to the ICU. She insists that the patient was unconscious. On the aspect of the first visit to the hospital on 14.01.2016

to 02.02.2016, the patient had availed of Mediclaim Insurance and this insurance amount is stated to have been exhausted after this treatment.

9. We have heard the learned counsel for the applicant and learned counsel for the respondents and carefully considered the facts and circumstances, law points and rival contentions in the case.

10. At the outset, it is observed that the patient who is the applicant's late husband was a pensioner who is entitled to cashless treatment at empanelled hospitals and Pathology laboratories. For this purpose, the procedure under the CGHS is to obtain reference duly stamped for enabling cashless treatment and it would be treated as a CGHS credit patient in the bills, computed at CGHS rates, that would be sent directly to the CGHS authorities without reference to the patient.

11. In the present case, a query was posed to the learned counsel for the applicant during the hearing held on

04.02.2019 when the learned counsel for the respondents was not available. It was confirmed that the applicant did not intimate the CMO, CGHS about the emergency after admission in an empanelled hospital. The pensioner was not given credit facilities and bills for this purpose and first intimation was given to the CGHS along with the bill which was received by the employee's spouse after the employee had deceased. This accords with the email correspondence of the respondents with the Ruby Hall Clinic which was an empanelled hospital at that point in time. The respondents had sent an email on 24.07.2017 at 3:48PM as follows:

"Sub: Information reg. Claim of Mr. Raveendra Kumar.

Sir,

As telephonically discussed, you are requested to communicate why the cashless facility was not provided to the beneficiary, Mr. Raveendra Kumar, CGHS Pensioner Ben ID 1840000 (Hospital ID: 1604653 dt. 09.04.2016).

The Beneficiary was admitted in emergency under category: CGHS Paying, between 24.02.2016 and 09.04.2016. Patient expired and an

amount of 13,47,879 was charged from the patient.

Please provide the necessary information urgently.

12. In reply, they have received the following email:

"Sub: Re: Information reg claim of Mr. Raveendra Kumar.

Sir,

Reference you mail with regard to the patient Raveendra Kumar.

During the year 2016, the patient was admitted 3 times as follows:-

- 1."1. Under registration No. 1601147 - 14.01.2016 to 02.02.2016 under Mediclaim Category.
2. Registration No. 1603601 - 12.02.2016 to 19.02.2016 as CGHS paying.
3. Reg. No. 1604653 - 24.02.2016 to 09.04.2016 as CGHS paying - Expired with total Bill Rs. 13,36,344/-."

While the first admission was under the mediclaim category, the second and third admission, the patient has taken admission as a private case since the mediclaim policy was exhausted. During the admission while the treatment was in progress, the patient had approached the billing office and informed them about his status as a CGHS beneficiary and has requested the office to extent the CGHS rate benefits to him. As a special case, we have allowed this and put this patient under the CGHS paying patient category. We have created this category in our system to pass on the benefits of CGHS rates to those patients who are taking admission in the hospital without any CGHS memo from the Department. This patient has

never brought any CGHS memo at the time of taking admission in the Hospital nor at any time during the treatment. Also, please note that both the second and third admission was not an emergency case. Patient has taken regular admission in the normal ward."

13. From the above, it is clear that the respondents had noted the claim of the applicant that the case was allegedly one of emergency for the period between 24.02.2016 and 09.04.2016 for which a claim had been submitted and they were anxious to learn as to why the cashless facility intended for a CGHS pensioner was denied to him. From the above, it is clear at the outset, that during the admission process, the patient approached the billing office and claimed to be a CGHS pensioner which was allowed as a special case and he was put into a CGHS paying patient category only for the purpose of applying the CGHS rates to pay for patients who come without a CGHS memo but are clearly identified as entitled under the CGHS Scheme. It is also quite possible that the reference to the patient could be the person

accompanying the patient. Further, the hospital has noted that the second and third admission were not emergency cases and the patient had taken regular admission in the normal ward.

14. Contrary to this, the applicant has produced a certificate from a consultant with illegible signature who has asserted (Annexure A-1) that the patient was admitted in the hospital in emergency conditions. This certificate is in a standard format as also recorded in the same certificate and only the date and details of the patient are recorded in hand writing. The authority under which the Consultant has issued a certificate on behalf of the Administrators of the Ruby Hall Clinic is unclear. Moreover, the facts mentioned in it in standard format which would apply to any kind of patient irrespective of emergency, flies in the face of the actual facts contained in the reply email from the clinic to the CGHS.

15. The applicant may plead that the Administrators were in error in regard to the

third admission for which reimbursement claims had been submitted and that it was an emergency case. However, it is evident from the reply that there was an admission on 14.01.2016 to 02.02.2016 under the Mediclaim category for which no details of illness has been put forth by the applicant in pleadings nor has the fact of such an admission ever been averred by the applicant in pleadings. The applicant again got admission on 12.02.2016 to 19.02.2016 which is stated in the email as CGHS paying which means that no reference had been obtained from the CGHS Wellness Centre. No details of the nature of illness requiring indoor treatment and the nature of bills, and the submission details of such bills to the CGHS have been provided by the applicant. We may only presume that the first two admissions were previous instances of a chronic condition which led to the eventual admission on 24.02.2017 when the Cancer had metastasized to an unmanageable level leading to the death of the patient. In the face of such discordance in the facts

as averred by the applicant and without any evidence in support, and the details of the email which reveal the truth of the matter, it is apparent that there was sufficient time and opportunity for the patient to consult the Wellness Centre even prior to 14.01.2016 or at least after 02.02.2016 before getting admitted in the hospital once again and after 19.02.2016 after the second discharge. No such efforts were made by the patient and when asked about any medical records that the patient had for supporting their dependence on the CGHS, none have been produced as part of the pleadings or during the hearing.

16. In the circumstances, we are unable to conclude that the patient could not have approached the Wellness Centre and obtained a variety of treatments including possible references to the very same empanelled hospital. The patient indeed had substantial opportunities to do so and failed to do so. Even on the third occasion for admission, the patient's death summary records that he entered in conscious and oriented condition

which is a clearer statement than the vague statement made by an alleged Consultant who has signed the impugned certificate at Annexure A-1. The email also makes it clear that the patient was admitted in a normal private ward and not in the CCU as argued by the applicant and her learned counsel, without any evidential support.

17. While it is true that the patient eventually died at the conclusion of the third admission, there needs to be a distinction between a chronic condition leading to death and an emergency leading to death. The present case clearly appears to be in the former category and from the standpoint that the applicant had sufficient advance notice about his own condition and could have approached the Wellness Centre nearly barely 4 Km away from his house differs considerably from the emergent requirements that are pre-conditions in each and every one of the citations referred by the applicant, which do not exist. Therefore, the citations do not help the

applicant. The claims of the applicant are, no doubt, of a large amount and would evidently be a source of hardship but that cannot justify the concoction of a claim in the manner in which it has been formulated in this application and the applicant's averments can only be considered to be a tissue of lies. However, considering the circumstances of the matter, we do not wish to impose any costs on the grieving family. Therefore, the OA is dismissed as lacking merits and without any order as to costs.

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R. Vijaykumar 4/19
Member (A)

Ram.

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