

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 3341/2015

New Delhi this the 11th January, 2019

Hon'ble Sh. Pradeep Kumar, Member (A)

Shri Bal Mukund,
Aged: 50 years,
S/o Late Sh. Ram Nihor,
R/o House No.2/172,
2nd Floor,
Subash Nagar,
New Delhi-110027
Working as Food Safety Officer,
Department of Food Safety,
Govt. of NCT of Delhi,
A-20, Lawrence Road,
New Delhi-110035.

... Applicant

(By Advocates : Sh. R.V. Sinha, Sh. Satyendra Kumar and
Sh. Amit Sinha)

VERSUS

1. Govt. of NCT of Delhi,
Players Building,
I.P.Estate,
New Delhi-110002
(Through: The Chief Secretary)
2. Food Safety Department,
8th Floor Mayur Bhawan,
Shankar Market, Connaught Place
New Delhi-110001
(Through: The Commissioner)
3. The Director Health Services,
Govt. of NCT of Delhi
Directorate of Health Services
F-17 Karkardooma,
Delhi-110032

...Respondents

(By Advocates : Smt. Alka Sharma, Ms. Rishu Aggarwal
and Sh. Pratap Shanker)

ORDER (ORAL)

The applicant is an employee of Govt. of NCTD working in Department of Food Safety. He was under treatment since long with one Dr. Randhir Sood, who was in Ganga Ram Hospital which is an empanelled hospital. He was continuously under treatment and supervision of the said Dr. Randhir Sood for his ailments. The cost of treatment, having been given by this Doctor at Ganga Ram Hospital, was being reimbursed to the applicant in accordance with the relevant DGEHS rules which are akin to CGHS. The specific para in this reads as under:-

“3. Dependent family members

For availing medical facilities under DGEH Scheme spouse (wife/husband), children, parents, sisters, widowed/divorced/separated daughters, brothers, stepmother shall be deemed to be dependent on the government servant if they are normally residing with him/her and their income from all sources including pension and pension equivalent to DCRG benefit/family pension, does not exceed Rs. 3500 plus amount of dearness relief thereon drawn as on the date of consideration (w.e.f. 1.1.2009), as per provisions contained in CS (MA) and CGHS rules issued from time to time. Any addition/deletion in family must be informed immediately by the beneficiary to his/her office, Authorized Medical Attendant (AMA) and SPO of DGEHS.”

2. In due course of time, Dr. Randhir Sood joined Medanta Hospital, Gurgaon. Applicant developed certain emergency conditions on 03.05.2013, he contacted Dr. Randhir Sood who was now in Medanta Hospital by that time and as per the advise rendered, three surgeries had to be undergone at close intervals, i.e., 1st surgery was done on 17.05.2013 and the applicant was discharged on 20.05.2013, 2nd surgery was done on 06.11.2013 and

was discharged on 12.11.2013 and 3rd surgery was done on 17.01.2014 and was discharged on 23.01.2014.

3. The applicant had submitted the bills for reimbursement. These, however, were denied. Subsequent to that, he made several other representations also. However, these were rejected last such rejection being on 13.05.2015. This rejection is the grievance ventilated in this OA. As a whole, the applicant had spent Rs. 8,06,277/- on these three surgeries.

4. The applicant pleaded that the matter in respect of the reimbursement of medical expenditure has been adjudicated by the Hon'ble Apex Court in the case of **Shiva Kant Jha vs. Union Of India AIR 2018 SC 1975**.

The Hon'ble Apex Court had laid down the law as under:-

“With a view to provide the medical facility to the retired/serving CGHS beneficiaries, the government has empanelled a large number of hospitals on CGHS panel, however, the rates charged for such facility shall be only at the CGHS rates and, hence, the same are paid as per the procedure. Though the respondent-State has pleaded that the CGHS has to deal with large number of such retired beneficiaries and if the petitioner is compensated beyond the policy, it would have large scale ramification as none would follow the procedure to approach the empanelled hospitals and would rather choose private hospital as per their own free will. It cannot be ignored that such private hospitals raise exorbitant bills subjecting the patient to various tests, procedures and treatment which may not be necessary at all times.

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. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of

specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. 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. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.

This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the central government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force. In the facts of the present case, it cannot be denied that the writ petitioner was admitted in the above said hospitals in emergency conditions. Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. The doctors did his operation and had implanted CRT-D device and have done so as one essential and timely. Though it is the claim of the respondent-State that the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS rates and that too after following a proper procedure given in the Circulars issued on time to time by the concerned Ministry, it also cannot be denied 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.”

A similar judgement has been delivered by Division

Bench of Delhi High Court **Union Of India vs. Smt. Shanti**

Devi & Ors. decided on 10.07.2015 in W.P. (C) 7540/2015.

5. The respondents have submitted their counter and reliefs being sought have been opposed on the plea that the applicant is governed by the rules and regulations under DGEHS, wherein in conditions of emergency, it was enjoined upon the applicant to

obtain treatment at a hospital near to his home. As against this, he had undertaken treatment at a hospital, namely, Medanta Hospital, Gurgaon which is far away from his normal place of residence. Moreover, this hospital is not an empanelled hospital.

6. The learned counsel for the respondents also pleaded that in the instant case, had the treatment been undertaken in any other hospital which was non-empanelled hospital, he was required to take a referral letter which was not taken in this case. Hence, reimbursement cannot be given. They also pleaded that in the instant case, there were three surgeries performed and as such, all the three cannot be said to be in the course of emergency and they will come in the realm of planned surgery.

7. Heard Sh. R.V. Sinha, Sh. Satyendra Kumar and Sh. Amit Sinha, learned counsels for the applicant and Smt. Alka Sharma, Ms. Rishu Aggarwal and Sh. Pratap Shanker, learned counsels for the respondents at length.

8. The basic facts of the instant case are not in dispute. Instant case is one where the applicant had certain ailments which were continuing since long and certain emergency conditions, in the assessment of the applicant, occurred on 03.05.2013 and being under treatment by one Dr. Randhir Sood since long, it was only natural that the applicant contacted the same doctor. It is noted that in such situations, the trust factor between the patient and the

doctor, also gets invoked. The difficult condition faced by the applicant and his family under such circumstances can very well be imagined and especially so since same ailments were continuing since long. He accordingly had gone to Medanta Hospital where this doctor was working at that time and as advised by the said Dr. Randhir Sood, requisite surgeries were performed at relevant point of time.

9. The applicant had applied for re-imburement but same was denied. The only thing required and not done or which was not available to the applicant in the instant case is the referral letter to Medanta Hospital. Else, his case would have been covered under the relevant policy directives under DGEHS.

10. This Tribunal is concerned with imparting substantial justice and not get bogged down in mere technicalities. In such cases, as also laid down by the Apex Court, it is the factum of treatment which is important and not whether it was in an empanelled hospital or otherwise. Factum of treatment is not under doubt in this case. The Delhi Govt. policy under DGEHS, as reproduced below, has specific provisions in clause 4(3), whereunder the reimbursement can be made at DGEHS rates.

“3. Treatment in emergent conditions by the beneficiary can be availed in any recognized institution of his/her choice directly with out being formally referred by AMA. Cashless treatment facility in emergent conditions will be available to all working beneficiaries in recognized empanelled private hospitals/diagnostic center of Delhi on production of valid DGEHS card. Follow up subsequent to any emergent

treatment/procedure or for the illness shall be on authorization of concerned AMA.

Treatment in private not recognized/not empanelled under the scheme in medically emergent conditions will also be admissible when treatment is necessitated in such hospitals being situated near the place of illness/trauma and when no other recognized facility is available nearby or due to circumstances beyond the control of the beneficiary. However, reimbursement shall be made by concerned department within the ceiling of DGEHS rates.”

11. In view of the foregoing, this Tribunal is of the view that reimbursement should be made to the applicant, who is governed by the DGEHS. However, same will be at DGEHS rates.

12. Accordingly, the applicant is directed to make a representation to the respondents and submit the relevant bills, discharge summaries, etc. for the three surgeries performed at Medanta Hospital within a period of 4 weeks. In case these documents are already submitted, this representation shall give relevant references. Thereafter, the respondents are directed to process and reimburse all such bills at DGEHS rates, which would otherwise be applicable, had the treatment been taken in some other empanelled hospital. This processing and reimbursement shall be completed within a period of eight weeks of receipt of said representation.

There shall be no orders as to cost.

(Pradeep Kumar)
Member (A)

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