IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No.21/1149/2018

Reserved on: 01.07.2019
Pronounced on: 12.07.2019

Between:

S. Rani Bai, W/o. late S. Sudershan Rao,
Aged about 78 years,
Occ: Retd. Assistant Commissioner of Provident Fund,
R/o. Maitri Enclave, Villa No.10,
Yapral, Hyderabad.

… Applicant

And

1. Union of India, Rep. by the Principal Secretary,
Ministry of Labour and Employment,
Employees' Provident Fund Organization,
Bhavishya Nidhi Bhavan, 14-Bhikaji Cama Palace,
New Delhi – 110 066.

2. The Addl. Central P.F. Commissioner,
Zonal Office (Telangana),
3-4-763, Barkatpura Chaman,
Hyderabad – 27.

3. The Assistant P.F. Commissioner (HRM),
Regional Office, Bhavishyanidhi Bhavan,
3-4-763, Barkatpura Chaman, Hyderabad – 27.

4. The Regional Provident Fund Commissioner-I,
Employees' Provident Fund Organization
3-4-763, Barkatpura Chaman, Hyderabad – 27.

5. The Regional Provident Fund Commissioner,
Employees' Provident Fund Organization,
Kukatpally, Hyderabad.

… Respondents

Counsel for the Applicant … Mr. I. Kaladhar, Advocate for
Ms. Priya Iyengar

Counsel for the Respondents … Mr. G. Jaya Prakash Babu,
SC for EPFO

CORAM:
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER
[Hon'ble Mr. B.V. Sudhakar, Member (Admn.)]

2. OA is filed for not considering the claim of the applicant for medical reimbursement.

3. Brief facts of the case are that the applicant is a retired employee of the respondents organization. On 09.12.2017, she became unconscious and at about 6.30 AM, her son admitted her in the nearest hospital namely Poulami Hospital, A.S. Rao Nagar, Hyderabad in an unconscious state. She was given emergency treatment and discharged on the same day. The applicant was charged Rs.3,75,000/- towards her treatment in Poulami Hospital. Besides, as the said hospital did not have the requisite equipment, applicant was shifted to Care Hospital, Banjara Hills, Hyderabad. On 10.12.2017, Care Hospital raised a bill for Rs.1,11,642/-. On submitting both the bills by the applicant, amounts of Rs.46,418 and Rs,28,450 were allowed by the respondents against the bills raised by the Poulomi Hospital and Care Hospital respectively. Consequently, the applicant represented on 02.05.2018 for rejecting a large part of her claim. Aggrieved that the respondents have not considered here request, OA has been filed.

4. The contentions of the applicant are that as per CPFC's letter No. HRM-99(10)2013/medical.bangalore/6637, dt. 16.06.2014, she is eligible. The rejection of the medical bill was done without application of mind.

5. Respondents have not filed reply statement even after lapse of more than seven months and despite last opportunity being granted to them for filing reply. However, learned counsel for the respondents has submitted, across the bar, the parawise comments prepared and sent to him by the respondents and the same is taken on record. The respondents in the said remarks stated that as per Central Services (Medical Attendant) Rules, 1944, an amount of Rs.46,418/- and Rs.28,450/- were allowed and sanctioned. Applicant on representing vide letter dated 2.5.2018, was informed that medical bills were processed as per relevant rules. The applicant's case does not involve relaxation of rules towards reimbursement of full expenditure. Respondents also claim that the applicant was brought to Poulomi Hospital in conscious state as per the discharge summary and not in unconscious state, as stated by the applicant. The bill amount charged is Rs.2,25,000/- whereas the applicant has shown the amount charged by Poulomi Hospital as Rs.3,75,000/- . Applicant also did not inform the hospitals that she is eligible for reimbursement in accordance with CS (MA) Rules, 1945. If the applicant were to inform such details to the hospital, medical treatment charges would have been restricted to Central Government Health Scheme (CGHS) tariff. The said two hospitals are recognized under CGHS. The respondents have followed the instructions contained in letter dt. 16.06.2014 in processing the medical bill. The condition of the applicant was not as serious as to relax the reimbursement rules in order to pass the medical bill in full. Applicant has cited the observation of the Hon'ble High court of Karnataka at Bangalore in WP No.8995/2013 (S-CAT) in the Regional PF Commissioner-I, Bangalore

Vs. C.K. Nagendra Prasad, in support of her claim. However, the same is not relevant and since in the case cited, the hospital was recognized under CS (MA) Rules. In the present case, both the hospitals are recognized under CGHS, but not under CS (MA) Rules, 1945. Besides, OA 366/2012 referred to by the applicant does not apply to her case.

6. Heard both the counsel and perused the documents placed on record.

7 (I) Poulomi Hospital has issued an emergency certificate stating that the applicant was admitted in emergency condition on 09.09.2017. Applicant has also brought it to the notice of the Poulomi Hospital that she was employed in the respondents organization as is evident from the Essentiality Certificate issued by the hospital vide IP No. 2403/17. Besides, as per letter dt. 16.06.2014 of the respondents, it is stated that-

> "*The Pensioners as well as their eligible members should have availed indoor treatment in any of the Central/ State Government hospitals and the hospitals recognized by the State/ Central Government/ CGHS/ CS (MA) Rules as well as hospitals fully funded by Central or State Government only..*"

Both the hospitals, as admitted by the respondents, were approved under CGHS. The hospitals are expected not to charge more than the package rates prescribed by the CGHS. Further, Hon'ble Supreme Court in S. Jagannath Vs. Union of India, reported in 1997 (2) SCC 87, has held that:

> "*If the Government servant has suffered an ailment which requires treatment at a specialised approved hospital and on reference whereat the Government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant*."

(II) The Hon'ble High Court of Delhi in ***V.K. Gupta Vs. Union of India***, decided on 05.04.2002, reported in ***2003(1) SLJ 195 Delhi***, has referred to the decision of Coordinate Bench of the Hon'ble Delhi High Court in Civil Writ No. 5317/1999 titled M.G. Mahindru V. Union of India & Anr, decided on 18.12.2000, wherein the learned single Judge relied upon decisions of Narendra Pal Singh V. Union of India and Ors, as well as State of Punjab & ors v. Mohinder Singh Chawla. Hon'ble Supreme Court in State of Punjab & ors v. Mohinder Singh Chawla etc. has observed as under:

> *"The right to health is integral to right of life. Government has constitutional obligation to provide the health facilities. If the Government servant has suffered an ailment which requires treatment at a specialised approved hospital and on reference whereat the Government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant. "*

(III) Hon'ble Bangalore Bench of this Tribunal in OA 65/2012, in a similar case, the medical claim of Rs.1,53,929/- made by one another employee belonging to the respondents organization, when restricted to Rs.31,725/-, the claim made was allowed to the fullest extent. Hon'ble Tribunal, citing Rule 6 of CS (MA) Rules, 1944 allowed the OA vide order dt. 20.12.2012, and directed the respondents therein to pay the total amount. This was upheld by the Hon'ble High Court of Karnataka in WP No. 8995/2013 (S-CAT), wherein it was observed as under:

> *"11. A perusal of Rule 6 indicates that there is no fetter imposed unless rule itself is fixing any ceiling for the cost of the treatment and it contemplates reimbursement of the expenses incurred or paid by the employee in the opinion of the authorized medical attendant unless such treatment was necessary, etc. The*

restriction imposed which Mr. Hari Prasad has relied upon is as per the Office memorandum of the year 2002.

12. The Office Memorandum cannot regulate the rules or restrict the operation of the rule. Rule 6 being a beneficial provision, we think it should be interpreted to give its full effect and not to restrict or to deprive of the benefits to the employee."

Moreover, as admitted by the respondents in their reply, the Memo dt. 16.06.2014 of the respondents reads as under:

"The claims shall be regulated for reimbursement subject to the rates/ ceiling, terms and conditions prescribed under the CS (MA) Rules, 1944/CGHS/actual cost, whichever is lower and as per instructions of Govt. of India….

Further, it was also mentioned therein that, "…in specific cases, based on distinguishable facts, a view can be taken on, case to case basis, as per the decisions of different courts in this regard."

The Memo does suggest that the medical reimbursement has to be processed based on the views expressed by different judicial forums. The same has been elaborately brought about in paras 7(I) to (III) above. In fact, Rule 6 of CS (MA) Rules does not envisage any ceiling in the reimbursement of medical expenses. Thus, even as per rule, the applicant is eligible to seek reimbursement of medical claim she has made.

(IV) Self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution. It needs no reiteration. Nevertheless, being on the subject of medical reimbursement, remarks made by the Hon'ble Supreme Court are profound and thought provoking which is reproduced hereunder, for us all to ponder as to the approach one has to adopt on an issue where the life of an individual is at

stake. In ***State of Karnataka v. R. Vivekananda Swamy, (2008) 5 SCC 328,*** the Apex Court has held as under:-

> ***"20.*** *Law operating in this field, as is propounded by courts from time to time and relevant for our purpose, may now be taken note of.*
>
> ***21.*** *In Surjit Singh v. State of Punjab, this Court in a case where the appellant therein while in England fell ill and being an emergency case was admitted in Dudley Road Hospital, Birmingham. After proper medical diagnosis he was suggested treatment at a named alternate place. He was admitted and undergone bypass surgery in Humana Hospital, Wellington, London. He claimed reimbursement for the amount spent by him. In the peculiar facts of that case it was held:*
>
> > *"11. It is otherwise important to bear in mind that self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defence in criminal law. Centuries ago thinkers of this great land conceived of such right and recognised it. Attention can usefully be drawn to Verses 17, 18, 20 and 22 in Chapter 16 of Garuda Purana (a dialogue suggested between the Divine and Garuda, the bird): in the words of the Divine:*
> >
> > *17. Vinaa dehena kasyaapi canpurushaartho na vidyate*
> >
> > *Tasmaaddeham dhanam rakshetpunyakarmaani saadhayet*
> >
> > *Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.*
> >
> > * * *
> >
> > *18. Rakshayetsarvadaatmaanamaatmaa sarvasya bhaajanam*
> >
> > *Rakshane yatnamaatishthejje vanbhaadraani pashyati*
> >
> > *One should protect his body which is responsible for everything. He who protects himself by all efforts, will see many auspicious occasions in life.*
> >
> > * * *

20. Shariirarakshanopaayaah kriyante sarvadaa budhaih

Necchanti cha punastyaagamapi kushthaadiroginah

The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body.

* * *

22. Aatmaiva yadi naatmaanamahitebhyo nivaarayet Konsyo hitakarastasmaadaatmaanam taarayishyati

If one does not prevent what is unpleasant to himself, who else will do it? Therefore one should do what is good to himself."

* * *

The Hon'ble Supreme Court in the ***State of Punjab & Ors. v. Mohinder Singh Chawla and Ors., (1997) 2 SCC 83***, has observed that right to health is an integral part of the right to life and therefore, if a Government employee has undergone specialized treatment, the same must be reimbursed by the State. In a judgment in Govt. of NCT of Delhi & Anr. v. Prem Prakash (Dr.) & Ors., 153 (2008) DLT 1 (DB), the Hon'ble Delhi High Court, has observed as under:

"13. After reviewing several judgments of this Court on the subject and the Supreme Court and as noticed in para 13 of the judgment, it was held that while balancing the interest of the Government which does not have unlimited funds on the one hand and, therefore, has to limit his financial resources and paying capacity as also its duty towards its employee to reimburse medical expenses, a balance could be struck by directing the respondent-Government to reimburse medical expenditure in full when the following conditions are met:

(a) The private hospital where the treatment is taken by a Government employee is on the approved list of the Government.

(b) The illness for which the treatment is required is of emergent nature which needs immediate attention and either

the Government hospitals have no facilities for such treatment or it is not possible to get treatment at Government hospital and it may take unduly long for the patient to get treatment at Government hospital.

(c) The concerned employee/patient takes permission to get treatment from the Government hospital, which is granted and/or referred by the Government hospital to such a private hospital for treatment.

14. Following the aforesaid judgment of the Coordinate Division Bench, we are of the view that in the cases before us, the aforesaid three conditions are duly met. These were serious and emergent cases of cardiac ailment. The treatment was with the permission of the competent authorities and at the empanelled hospitals. Therefore, the respondents would be entitled to full reimbursement. We may mention that it would be open for the respondents to delete from the bills, charges for items like telephone, TV, cost of toiletries, etc., which do not form part of the package rates and if the same have been billed."

Further, as recently as on 28.04.2010, Hon'ble Delhi High Court provided relief in an identical case, based on the aforesaid judgment in WP (C) No.9229/2009. In the present case, applicant was admitted in an emergency condition in recognized hospitals and that the admission was in recognition of the fact that she is a Central Government pensioner. The fact that she was treated was genuine.

(V) Thus, from the aforesaid, it is evident that the action of the respondents is against rules, arbitrary as well as contrary to the legal principles laid down by the superior judicial forums. Hence, the impugned order dt. 11.06.2018 is quashed. Consequently, the respondents are directed as under:

i) to scrutinize the medical bills claimed by the applicant and allow the amount eligible keeping in view the Rule 6 of CS (MA) Rules and the observations made by the Hon'ble Superior judicial forums cited supra.

ii) Time calendared to implement the judgment is three months from the date of receipt of this order.

iii) with the above directions, the OA is allowed. There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 12th day of July, 2019

evr