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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.543 OF 2003

New Delhi, this the 24th day of February, 2004

HON'BLE SHRI SHANKER RAJU, JUDICIAL MEMBER
HON'BLE SHRI S.A. SINGH, ADMINISTRATIVE MEMBER

A. Chakarborty S/o
R/o C-7, Minto Road Complex,
New Delhi.

....Applicant
(By Advocate : Shri D.S. Mahendru for
Shri S.K. Anand)

Versus

Union of India, through

1. Secretary,
Ministry of Finance,
South Block, New Delhi.
2. Secretary,
Ministry of Health,
Nirman Bhawan, New Delhi.
3. Director General
Res & Development
Directorate of Personnel (RD-Pers-7)
B-Wing, Sena Bhawan, New Delhi.
4. The Director,
Research & Development Organisation,
Centre for Environment and Explosive Safety,
Brig. S.K. Mazumdar Road,
Delhi-110054.

....Respondents
(By Advocate : Shri M.K. Bhardwaj for A.K. Bhardwaj)

ORDER

SHRI SHANKER RAJU :

Through this OA, applicant is seeking payment of medical reimbursement to the tune of Rs.1,86,400/- less the amount already paid to the applicant.

2. Applicant while working as Senior Administrative Officer suffered serious heard stroke and was rushed to Hindu Rao Hospital where he remained for seven days. He was advised to undergo angiography test at G.B. Pant Hospital.

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3. By an order dated 14.8.2001 issued by the Additional Director, Head Administration for Director in Defence Research Organisation Centre for Environment & Explosive Safety, Ministry of Defence, the applicant was permitted to undergo PTCA VS CABG, i.e., treatment for heart at Escorts Heart Institute empanelled under CGHS.

4. However, by an order dated 13.9.2001 regarding accommodation and other diagnostic test, the expenditure was restricted to package deal rates.

5. The applicant was admitted to Escorts Heart Institute and had undergone CABG on 4.10.2001 and was discharged from the hospital on 9.10.2001.

6. Applicant incurred total expenditure of Rs.1,77,500 towards surgery and a sum of Rs.8900 towards operation investigation which comes to Rs.1,86,400/-.

7. Applicant on 3.1.2002 submitted his medical form for medical reimbursement. On 13.2.2002 certificate regarding payment of Rs.99,000/- towards surgery was issued to the applicant. Applicant represented for actual reimbursement of expenditure incurred by him towards his treatment. Finding no response the present OA was preferred by the applicant seeking the aforesaid claim.

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8. Learned counsel of the applicant states that it is on the permission granted to him, he has been referred to Escorts hospital. It is in this conspectus stated that the inclusion of Escorts hospital by the Ministry of Health through their notification dated 7.9.2001 was in fact received in respondents office on 19.12.2001 as such the same cannot be applied to him and he has to be reimbursed the full amount incurred on the treatment. Applicant preferred a representation relying upon the decision of Hon'ble High Court in the case of V.K. Gupta Vs. UOI in CWP No.4305/2001, which has been considered by the respondents. As the amount due to him as per the package deal fixed by the Ministry of Health has already been paid, the same has been rejected.

9. Learned counsel states that the Government after 1998 had not revised the rates as such the applicant is entitled for full reimbursement of the expenses incurred in his treatment.

10. On the other hand, Shri M.K. Bhardwaj, learned proxy for Shri A.K. Bhardwaj, learned counsel for respondents vehemently opposed the contention raised by the applicant by referring to decision of Apex Court of three Judges Bench in the case of State of Punjab and Others Vs. Ram Lubhaya Bagga and Others, 1998(3) ATJ 154 and contended that fixation of rate is the policy decision of the Government for reimbursement, as such the same is not violative of Articles 14 and 16 of the Constitution of India and

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that the State has the duty to maintain the health of the citizens but financial constraints are also to be kept in view.

11. According to Shri Bhardwaj, the orders passed referring note to Escorts Institute at his own and DGHS notification dated 7.9.2001, the Health Ministry has not recognised the Escorts Hospital among the list of private hospitals, as such the applicant has taken treatment at Escort Hospital without any authority. He is not entitled to receive even a sum of Rs.1,07,900/- which had been given to him and this should be refunded back.

12. On our pointed query, whether in similar situation where the applicant is presumed to have taken treatment in some other hospital the package rate would be applicable to him or not. It is stated that this would open a pandora box.

13. In the rejoinder, pleas taken in the OA are reiterated.

14. We have heard the learned counsel of the party and perused the material available on record.

15. It is not disputed that among the list of private hospitals, Escort hospital has not been included in OM issued on 7.9.1991. However, we find that the OM dated 25.10.2001 prescribed that the beneficiaries can take treatment in Escorts Heart

Institute for specialised purpose like cardiological surgery and diagnostic procedure but the reimbursement would be restricted to the package rates provided under the Ministry of Health's OM dated 18.9.1996.

16. The Apex Court in Ram Lubhaya's case (supra) while dealing with new policy of Punjab Govt. insofar as restricting the treatment in AIIMS and other private hospitals observed as under:-

"26. When we speak about a right it correlates to a duty upon another individual, employer, government or authority. In other words, the rights of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further under Article 47, it is for the State to secure health to its citizen as its primary duty. No doubt the Government is rendering this obligation by opening government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible to reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its upkeep, maintenance and cleanliness has to be beyond aspersion. To employ the best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service oriented training not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its this obligation with top priority including by way of allocation of sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal. For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right

finances are an inherent requirement. Harassing such resources needs top priority.

27. Coming back to test the claim of the respondents, the State can neither urge nor say that it has no obligation to provide medical facility. If that were so it would be *ex facie* violative of Article 21. Under the new policy, medical facility continues to be given and now an employee is given free choice to get treatment in any private hospital in India but the amount of payment towards reimbursement is regulated. Without fixing any specific rate, the new policy refers to the obligation of paying at the rate fixed by the Director. The words are:

"...to the level of expenditure as per rates fixed by the Director, Health and Family Welfare Punjab for a similar treatment package of actual expenditure whichever is less."

28. The new policy does not leave this fixation to the sweet will of the Director but it is to be done by a Committee of technical experts.

"The rate for a particular treatment would be included in the advice issued by the District/State Medical Board. A Committee of technical experts shall be constituted by the Director, Health and Family Welfare, Punjab to finalise the rates of various treatment packages..."

29. 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 clients 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 of Article 47 of the Constitution of India.

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35. Learned counsel for the appellant submits that in the writ petition cited, the respondent did not specifically challenge the new policy of 1995. If that was done the State would have placed all such material in detail to show the financial

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strain. We having considered the submission of both the parties, on the aforesaid fact and circumstances, hold that the appellant's decision to exclude the designated hospital cannot be said be such as to be violative of Article 21 of the Constitution. No right could be absolute in a welfare State. A man is a social animal. He cannot live without the cooperation of large number of persons. Every article one uses is the contribution of many. Hence every individual right has to give way to the right of the public at large. No Fundamental Right under Part III of the Constitution is absolute and it is to be within permissible reasonable restriction. This principle equally applies when there is any constraint on the health budge on account of financial stringencies. But we do hope that Government will give the consideration and priority to the health budget in future and render what is best possible."

17. However, in a decision of two Judges Bench of the Apex Court in State of Punjab and Others Vs. Mohinder Singh Chawla and Others, (1997) 2 Supreme Court Cases 83, the actual expenditure was ordered to be reimbursed to the concerned. However, the aforesaid decision was taken into consideration by a Bench of Larger Coram and was not adhered to.

18. As a doctrine of precedent though both decisions are of Division Bench and one where the earlier decision has been taken into consideration and Coram of more judges than the earlier decision, the same shall have to prevail and would be binding precedent under Article 141 of the Constitution of India. This is a settled principle of doctrine of precedent.

19. High Court of Delhi in a case titled V.K. Gupta Vs. UOI in CWP No.4305/2001 decided on 5.4.2002

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while dealing with their own employee where the Registrar of Delhi High Court permitted the petitioner therein to undergo treatment for open heart surgery operation at Escorts Heart Institute. The total expenditure was incurred by the petitioner was Rs.2,27,276.35 but only an advance of Rs.1,02,465/- was paid. The Apex Court keeping in view that Escorts Heart Institute is a recognised hospital for specialised treatment of cardiac decease, having regard to the OM dated 18.9.1986 on the analogy that the cost of treatment is rising with the passage of time and also relying upon the decision in the case of Mohinder Singh Chawla's case (supra), permitted the actual reimbursement of medical expenses. The following observations have been made while allowing the claim of the petitioner therein:-

"10. The only submission by learned counsel for respondent Ms. Pinky Anand was that the respondents had reimbursed the rates as per the circular of 1996 and in all other cases reimbursement had only been done when ordered by the Court. This is hardly a satisfactory state of affairs. Respondents are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement, especially on account of their own failure in not revising the rates. In view of the foregoing discussion and the judicial pronouncements as noted above, the petitioner is entitled to full reimbursement of the expenses incurred at the Escorts Heart Institute & Research Centre, New Delhi where he was duly referred for specialized treatment by the respondents after according permission. Escorts Heart Institute & Research Centre being a recognised hospital for this purpose, the petitioner is entitled to be reimbursed the actual expenses, as incurred. A writ of mandamus shall issue to the respondents who shall pay Rs.70,115.85 to the petitioner within four weeks from today, together with costs assessed at Rs.1,500/-.

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Writ petition is allowed in the above terms."

20. If one as regard to the above, certainly the decision of the High Court of Delhi is per incuriam of the Supreme Court decision in State of Punjab and Others Vs. Ram Lubhaya Bagga and Others (supra) though as it relates to State of Punjab yet the power of the State to provide facilities which cannot be unlimited. The fixation of rates has been held to be in consonance with Articles 14 and 16 of the Constitution of India. However, we find that though the package rates have been revised in 1998, as transpired from the contentions put forth by the respondents, the rates have been revised further to 1,33,000/-. The decision of the High Court of Delhi has to be given goby and cannot be treated as a precedent in the light of the decision of the Apex Court in Bagga's case (supra), as the decision of the High Court is on peculiar facts and circumstances of the case. However, in the present case, not only the actual reimbursement but the advance is also stated to be recovered from the applicant on the ground that on the relevant date the Escorts Heart Institute was not recognised. This is a peculiar case where instead of applying strict law and rules, equitable consideration is also required. The facts emerged are that the applicant though initially recommended in GB Pant Hospital, the controlling authority has himself acting for the Director referred the applicant for treatment in Escorts Heart Institute. Moreover, we find that any instruction of Govt. of India which is executive

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in nature supplements the rules is required to be published and to be made known to the affected parties. The aforesaid principle gain support from the decision of the Apex Court in CWP 5363-64/98 decided on 14.12.1999 in SI Roop Lal and Others Vs Union of India and Others.

21. If one has regard to the above, it is not in dispute that the Ministry of Health vide its OM dated 7.9.2001 while recognising private hospitals/ diagnostic centre for specialised treatment which includes ailments of heart not included Escorts Heart Institute. Accordingly the rates prescribed would not apply if one takes treatment there. However, we find that a subsequent OM dated 25.10.2001 also recognised Escorts Heart Institute, where beneficiaries can take treatment and reimbursement has been restricted to the package rate as provided in the Ministry of Health OM dated 18.9.1996. We find that subsequent enhancement of package rates has been made by the concerned Ministry. This is irrational. As on one hand excluding the hospital from being recognised for diagnostic procedure and thereafter including the same and subsequently restricting to the package rates is the hostile discrimination between two similarly situated persons, i.e., the persons who had undergone treatment before 7.9.2001. In order to sustain a Govt. action twin test of reasonableness laid down under Article 14 of the Constitution of India is to be satisfied. The classification is to be based on intellectual differencia with an objective sought to be achieved. This corollary has been settled by a Constitution Bench of Apex Court in D.S. Nakara Vs. UOI, 1983 SCC (L&S) 145.

22.f By creating a classes within the class, Articles 14 and 16 of the Constitution of India are violated. A person who had undergone treatment before 7.9.2001 is to be re-imburse as per the prevalent package rates but the same is denied to the person who had received treatment in Escorts between period from 7.9.2001 to 25.10.2001. The Govt. servants who are covered under CGHS and who are beneficiaries have been treated as a class and discriminated. They would not get any reimbursement insofar as medical expenses are concerned.

23. Providing health is a State subject and its duty, there cannot be a denial that actual benefits which are revised, cannot be allowed. But the Govt. had been directed in Ram Lubhaya's case (supra) to take steps to increase the rate to redress the grievances of the Govt. servants. However, we cannot question the executive action. The only scope of judicial review is to see malafides, arbitrariness and violation of Articles 14 and 16 of the Constitution of India in the decision taken by the executive.

24. The applicant is not at fault to undergo treatment in Escorts Heart Institute as he had been referred in the due process by the competent authority. The package rate given is in consonance with OM dated 25.10.2001 though had to be applied retrospectively in peculiar circumstances of the case of the present applicant. However, as the rates were revised on the date of treatment, the applicant cannot

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be left in lurch and cannot be discriminated with others who had undergone treatment and reimbursement at higher rates thereafter.

25. Another aspect cannot be lost sight of ⁱⁿ ~~had~~ the applicant undergone ~~two~~ treatment in the private hospital recognised by the Govt, he would have been reimbursed as per the prevalent rates. Applicant has not been apprised of this notification till he got operated upon and as the publication has been on the later dates, his resort to Escorts Heart Institute was on the basis of due recommendations of the department, as such the department cannot shrink from their responsibilities.

26. In the light of the above, we partly allow the present OA and declare that the applicant is entitled for package rates and whatsoever reimbursed to the applicant cannot be recovered. However, respondents are directed to reconsider awarding of benefits to the applicant on the rates prevalent at the time of incurring medical expenses. There shall be no order as to costs.


(S.A. SINGH)

ADMINISTRATIVE MEMBER


(SHANKER RAJU)

JUDICIAL MEMBER

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