

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO .1090/2003

NEW DELHI 12TH DAY OF SEPTEMBER 2003

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Shri Jai Gopal Wadhwa,
9/310, Sunder Vihar, Outer Ring road,
New Delhi - 110087

.....Applicant.

(By Shri M I Ohri, Advocate)

VERSUS

1. Union of India
Through the Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi
2. The Director General,
Health Services,
Min. of Health & Family Welfare,
Nirman Bhawan, New Delhi
3. The Director,
Central Government Health scheme,
Nirman Bhawan, New Delhi

.....Respondents

(By Sh. R P. Aggarwal, Advocate)

O R D E R (ORAL)

The Applicant impugns respondents' order dated 10.1.2003 whereby his request for re-imbusement of expenditure incurred on medical expenses has been turned down. Applicant also challenges the validity of Circular dated 25.10.2001, restricting the medical imbursement to the package rates approved vide OM dated 18.9.1996. Quashment of the aforesaid order has been sought with direction to the respondents to re-imburse the balance amount of Rs.34,650/- with interest.

2. The applicant is a retired Government servant and a CGHS beneficiary for life.

3. OM dated 18.9.96 issued by Ministry of Health and Family Welfare recognised certain hospitals for treatment, fixing ceiling rates as well as package rates for heart surgery. As per clause 8 of the OM the rates would have to remain in force for a period of two years and no request for enhancement would be accepted during the aforesaid period.

4. Vide OM dated 7.9.2001 certain 'B' Grade private hospitals have been recognised and the package rates for CGHS beneficiaries has been made Rs.1,33,650/- for Coronary Bypass Surgery.

5. Subsequently vide letter dated 25.10.2001 though Sir Ganga Ram Hospital was recognised but with stipulation that the package rate of 1986 would apply.

6. Vide OM dated 6.5.2002 the package rates approved vide OM dated 7.9.2001 were also extended to other hospitals including Sir Ganga Ram Hospital.

7. Applicant who had developed cardiac problem consulted the Medical Officers of RMI Hospital who in turn referred the applicant for CABG in Sir Ganga Ram Hospital on the prevalent package rates. Applicant was admitted to the hospital on 7.3.2002 and was discharged on 13.3.2002 after bypass surgery.

8. Applicant preferred the claim for reimbursement of Rs.1,35,000/- paid to the hospital. On 16.7.2002 against the aforesaid claim only Rs. 99,000/- package rate had been

re-imbursed. Applicant represented for re-imburement of remaining amount of package rate of Rs.1,33,650/- which was turned down on the ground that the re-imburement has been calculated on the basis of old rates on which Sr. Ganga Ram Hospital was recognised.

9. Learned counsel for applicant Shri M I Ohri referring to a decision in OA No. 1516/2002 filed by R.P. Aggarwal Vs Union of India decided on 8.8.2002 contends that in all fours his case is covered by aforesaid decision. As package rates of OM issued in 1996 were valid and remained in force only for two years and rates prescribed on the revised OM dated 7.9.2001 had superseded the earlier orders. As such full re-imburement as per the new package cannot be denied.

10. Learned counsel relying upon the decision of apex court in the case of Smt. Prem Devi & Anr. Vs Delhi Administration & Others (1989 Supp(2) Supp (2) Supreme Court cases 330 as well as in SLP No. 1455 of 1992 Girdhari Lal Vs UOI decided on 3.1.96 contends that if package rate covers the issue the same would be treated in rem and would be applied to similarly circumstance, as this would save considerable public money and multiplicity on litigation.

11. Relying upon the decision of High Court of Delhi CWP No.4306 /2001 decided on 5.4.2002(VK Gupta Vs UOI) where a claim has been made for full re-imburement, it has been held "that in view of Ministry of Health and Family Welfare OM dated 7.9.2001 fixation of the package ceiling superseding earlier OM, the actual expenses are to be re-imbursed."

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12. On the other hand Shri R P Aggarwal counsel of the respondents states that, once being referred by the CGHS to Sir Ganga Ram Hospital on the old package rates of 1996 which are not repealed even after the OM dated 7.9.2001 are applicable and as such the applicant is stopped from claiming package rates as prevalent on 7.9.2001.

13. In this context it is stated that the package rate offered have not been agreed upon by Sir Ganga Ram Hospital as such the hospitals could not be considered on a fresh recognition was accordingly included in OM dated 7.9.2001. Subsequent OM dated 25.10.2001 restricted the treatment as per the package rates reflected in OM dated 18.9.96. Since the Hospitals included in OM dated 21.5.2001 do not agree to the terms and condition of the package rates the Government has no alternative but to recognise on the conditions agreed to in 1996. As Sir ganga Ram Hospital agreed to the terms and conditions, it was recognised in CGHS package of OM dated 6.5.2002. It is further stated the case of Tribunal referred to supra would be applicable to its facts and circumstances and is distinguishable.

14. I carefully considered the rival contentions of the parties and perused the material on record.

15. In the order passed by the Tribunal in RP Aggarwal's case (supra) the facts were that the applicant agreed on referral to Batra Hospital as per conditions stipulated in OM dated 18.9.96 as regards the package rates, was operated upon on 18.12.2001. Though the total expenditure incurred was about Rs.1,50,000/- but was not reimbursed in full. The court taking cognizance of the objections of the respondents' akin to taken before me in this O.A. observed

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that OM of 1996 in so far as package rates are concerned were void only for two years and revised OM dated 7.9.2001 has superseded it. Accordingly after 7.9.2001 a Government servant cannot be forced to get re-imburement at the lower rates. It was also taken cognizance that Batra hospital has been recognised in 2002; the claim of the applicant was allowed to be reimbursed at the package rates prescribed in OM dated 7.9.2001.

16. OM of 1996 in clause 8 clearly stipulates that rates prescribed are to remain only in force are only for two years. The aforesaid period was over on 18.9.98. Thereafter by a letter dated 25.10.2001 certain 'B' Grade Hospitals have been recognised with the package rates for cardiac bypass surgery as Rs. 1,33,650/- .

17. As the negotiations have been deliberated between the Hospitals and Government without any agreement arrived at for acceptance of new package rates vide letter dated 25.10.2001 which includes Batra Hospital as well as Sir Ganga Ram Hospital, package rates have been limited for re-imburement as per OM of issued in 1996. However on further negotiations Batra as well as Sir Ganga Ram Hospital have been recognised on 6.5.2002 to be added for package rates prescribed in OM dated 7.9.2001. However these orders had taken effect from the date of its issuance.

18. In my considered view which is in consonance with the decision of Hon'ble High Court Delhi in V K Gupta's case; on of issuance of letter dated 7.9.2001, the package rates described therein have been impliedly substituted the earlier package rates of 1996 and are to be extended to the

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referred CGHS beneficiaries for CABG. The fact of addition of Sir Ganga Ram Hospital for these package rate would relate back to 7.9.2001.

19. Moreover the decision in RP Aggarwal's case in all fours cover the present controversy and is fully applicable. I agree with the same and extend the benefits accorded therein to the applicant in the present OA. In so far as the contention that the applicant has consented to old package rates even after the revised rates on 7.9.2001, the aforesaid circular restricting the re-imbursement to the old package rates is not fair. Even if Sir Ganga Ram Hospital has been subsequently added to the new package rates. On such a hyper technical plea a beneficial legislation on harmonious consideration cannot be applied in isolation to the applicant's case.

20. In the result of foregoing reasons the OA is allowed. Impugned orders are quashed. Respondents are directed to re-imburse to the applicant the balance amount of Rs.34,650/- within a period of two months from the date of receipt of the copy of this order. However, no interest is allowed.

S. Raju
(Shanker Raju)
Member (J)

Patwal/