16

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1472/2003

New Delhi, this the 30th day of June, 2004

Hon'ble Shri S.K. Naik, Member (A)

Shri S.S.Taneja
s/o Late Shri N.C.Taneja
r/o C-1/13, Vasant Vihar
New Delhi-57

..Applicant

(By Advocate: Shri B.B.Raval)

Versus

1. Union of India

   1) Secretary to the Govt. of India
   Ministry of Health & Family Welfare
   Nirman Bhawan, New Delhi

   2) Secretary to the Govt. of India
   Ministry of Defence
   South Block, New Delhi

...Respondents

(By Advocate: Shri D.S.Mahendru)

O R D E R

Applicant - Shri S.S.Taneja - retired on superannuation as Joint Director of National Cadet Corpse (NCC), Ministry of Defence, Govt. of India on 1.5.1974. He was issued a revised CGHS card for whole life for himself and his wife on 16.3.1999. His wife Smt. Vimla Taneja required hospitalisation and the CGHS authorities vide their letter dated 30.10.2000 addressed to the Medical Superintendent, Escorts hospital accorded permission for treatment of Smt. Taneja. Even though the validity of this reference was initially for a period of three months, the same was further extended vide their letters dated 2.2.2001 and 17.8.2001. It was stated in these communications that applicant's wife Smt. Taneja was entitled to nursing home facilities and that necessary bills be sent to the Accounts Officer, CGHS, Nirman Bhawan, New Delhi for payment.

2. Based on the permission so accorded, the wife of the applicant received medical treatment from the Escorts hospital and was admitted there for varying periods on three different occasions.

3. While the hospital charged a sum of Rs.3,13,475/- from the applicant, he has been re-imbursed only a sum of Rs.1,42,745/- by the respondents. The applicant contends that a sum of Rs.1,70,730/- has been withheld by the respondents arbitrarily without furnishing any reason therefor. Repeated representations have not helped the applicant and hence this OA seeking a direction from the Tribunal to the respondents to release the balance amount of Rs.1,70,730/- to the applicant along with interest.

4. Counsel for applicant has argued at length to prove that the respondents after having permitted the treatment of the wife of the applicant in the Escorts hospital, have neither any legal nor any moral authority to deny the full re-imbursement of the bills paid by the applicant to the Escorts hospital. He has relied on the judgment of the Hon'ble Delhi High Court in V.K.Gupta v. Union of India & another, 97 (2002) Delhi Law Times 337 in which, in a case pertaining to an employee of the Delhi High Court who was similarly covered under the CGHS and had been referred to a specialised hospital with due permission, it had been held that the respondents could not deny full re-imbursement by placing reliance on the earlier Memorandum of 1996, wherein rates given were applicable for a period of two years and not revised.

The High Court in that case had held that the petitioner was entitled to full re-imbursement of expenditure incurred at Escorts hospital.

5. He has referred to another judgment of the Hon'ble Delhi High Court in Narendra Pal Singh v. Union of India & others, 79 (1999) Delhi Law Times 358 and has contended that as has been held by the Delhi High Court therein, a right to health is integral part to life and the Government has constitutional obligation to provide health facilities to its employees or retired employees - in case employee requires specialised treatment on emergency in approved hospital, duty of Government to bear or reimburse the expenditure in approved hospital. The High Court held that the petitioner if made to wait for prior sanction might not have survived and it, therefore, directed the Government to grant ex post facto sanction and not deny the claim of the petitioner on technical and flimsy grounds.

6. The respondents have contested the claim of the applicant. The counsel for respondents has emphatically contended that no injustice has been done to the applicant. The reference made to the Escorts hospital has to be seen in the context of the agreement/ Memorandum of Understanding (MOU) for a package deal available with the specialised institutions. Referring to the letter dated 30.10.2000 addressed to the Medical Superintendent, Escorts hospital, the counsel argues that the said letter of reference clearly stated that the necessary bills in respect of the treatment excluding diet charges were required to be sent to the Accounts

Officer, CGHS. The same instruction was incorporated in subsequent letters too. Therefore, the applicant was not required to make payment to the hospital at his level. Since the CGHS had a package deal with the Escorts hospital as per their OM dated 18.9.1996, it was for the hospital to have made the claim as per the rates of 1996 but the applicant at his own level for reasons best known to him has preferred to make the payment despite an endorsement of the reference to his wife who received the treatment. The counsel further contends that the respondents in fact have been liberal in the reimbursement of the medical claim when they have calculated the charges as per the revised package deal dated 7.10.2001.

7. Referring to the judgments relied upon by the counsel for applicant, counsel for respondents has argued that the same are not applicable to the facts of the preset case as the judgments are per incuriam, whereas the real law of the land on the subject has been laid down by the Hon'ble Supreme Court by a Bench of three Judges in the case of State of Punjab & others v. Ram Lubhaya Bagga & others, (1998) 4 SCC 117, in which it has been held that no right could be absolute in a welfare State and it can be claimed within the permissible and reasonable restriction. The Hon'ble Supreme Court in that case held that this principle equally applies when there are constraints on the health budget on account of financial stringencies. Fixation of rate for the purpose of re-imbursement is a policy matter which is within the domain of the Government and as such the same cannot be stated to be violative of Articles 14 & 16 of the

Constitution. The rates have been fixed and limit laid down on the basis of the report of an Expert Committee who has duly surveyed the market and given its recommendations and even though the State has the duty to safeguard and maintain the health of its citizens, the issue of financial constraints has also to be kept in view. The counsel has contended that the Escorts hospital with whom the respondents initially had an MOU for two years from 1996 had, however, ~~taken~~ not agreed to the revised rates offered to them during 2001. They, however, have subsequently agreed to abide by the revised rate based on which the re-imbursement has been allowed to the applicant. The counsel contends that as a matter of fact the applicant was entitled to re-imbursement only as per 1996 rates but taking a lenient and considerate view in the matter, as stated earlier, they have allowed the re-imbursement at the revised rates. The question of re-imbursement of the balance amount, therefore, does not arise.

8. I have considered the arguments advanced by the counsel for the parties as also have perused the records of the case. Counsel for applicant has laid a great stress on the reference of the Senior CMO of the CGHS permitting the treatment of the wife of the applicant at Escorts hospital. His main thrust has been that since the permission was granted for the treatment of his wife at the Escorts hospital, the respondents were legally bound to re-imburse the entire expenses incurred. He has relied on the two judgments of the Delhi High Court referred to earlier. I am afraid this argument has to be seen in the context of what the letter of reference

states. It has been categorically stated in the letter dated 30.10.2000 and subsequent communications that the necessary bills with regard to the treatment excluding diet charges were to be sent to the Accounts Officer, CGHS. A copy of this letter addressed to the Medical Superintendent has also been endorsed to CGHS beneficiaryes Smt. Taneja. It has not been explained as to why the applicant chose to make the payment to the Institute. While as a citizen one is entitled to his rights, no right can be treated as absolute as has been held by the Hon'ble Supreme Court and in the case in hand, I find that the applicant was admitted to the hospital on three different occasions and he had also made the claims for re-imbursement from time to time. When his first claim of Rs.1,85,950/- was not fully re-imbursed and the respondents allowed him only Rs.1,01,300/- on 27.2.2001, the applicant ought to have realised that for some reason he was not being fully re-imbursed and should have referred to the original letter of permission or inquired about the reasons behind the entire amount not being re-imbursed. Interestingly to the contrary, he voluntarily made full payments to the Escorts hospital even for the subsequent spell of treatment presumably with the hope that he would fight out the case and get the entire amount re-imbursed.

9. Counsel for applicant during his submissions had referred to the agreement of 1996 which the respondents had with Escorts hospital and stated that the validity of the said agreement having expired after two years in 1998; there was no subsisting legal agreement/contract when his wife was admitted on 2.11.2000. In the absence

of any such agreement, the counsel contends that the respondents would be obliged to reimburse the total expenditure. In the absence of any rule/guidelines to authorise such reimbursement in full, I am afraid, the contention of the counsel will run counter to the opinion expressed by the Hon'ble Apex Court in Ram Lubhaya Bagga's case (supra). A presumption can safely be drawn from the endorsement of the respondents on their letter of permission dated 20.10.2000 directing the Medical Superintendent of CGHS that the hospital was to charge as per the 1996 agreement, even though it has not been formally revised. Otherwise the hospital should have told the beneficiary that permission was not relevant and the treatment would be at his cost. In that eventuality, it would have been for the applicant to cross check the position with CGHS authorities and adopt the proper course of treatment, especially when it was not a cause of emergency and the treatment had to be undertaken repeatedly over a period of time. Obviously, the applicant appears to have taken for granted that he would manage to get the total expenditure reimbursed. In our country when the per capita public expenditure on health is less than Rs.250/- and there is always a constraint on resources, the State is entitled to lay down a policy as to how much reimbursement can be allowed to a serving/ retired employee, as held by the Hon'ble Supreme Court in Ram Lubhaya Bagga's case (supra). The reliance on Delhi High Court judgment in V.K.Gupta's case (supra) would not come to the support of the applicant as it was passed in the facts and circumstances of that case and the judgment of the Hon'ble Supreme Court by a Bench of three Judges was not brought to the notice of the Delhi High Court.

In Narendra Pal Singh's case (supra), the facts were different. It was a case of emergency and the treatment was not in spells. It has, therefore, clearly distinguishing features.

10. Under the circumstances and in view of the forgoing discussions, I find no merit in this OA and the same is accordingly dismissed with no order as to costs.

(S. K. Naik)
Member (A)

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