

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1961 OF 2003

New Delhi, this the 18th day of May, 2004

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Shri B.B. Sharma
Retired Sr. Section Engnr.(RS)
Northern Railway,
Loco Shed, Delhi.
R/o House NO.82, Badli Exten.
Badli, Delhi-110042.

.....Applicant

(By Advocate : Shri S.K. Sawhney)

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Chief Medical Director
Northern Railway,
Baroda House,
New Delhi.
3. Divisional Railway Manager
Northern Railway,
D.R.M. Office, Chelmsford Road,
New Delhi.

.....Respondents

(By Advocate : Shri Rajinder Khatter)

O R D E R

Applicant impugns respondents' order dated 20.12.2002 whereby his request for reimbursement of medical expenses incurred for transplantation of Kidney of his son at Ram Saran Tirath Ram Hospital, Amritsar has been turned down. Applicant at AIIMS rates seeks reimbursement of Rs.1,93,000/- incurred towards medical expenses on his son's treatment.

2. Brief history of the case is that the applicant while working in the Railways superannuated on 4.12.2002. Son of the applicant, who is a young man and promising sportsman, developed failure of

both the Kidneys. He was admitted in Central Hospital of Northern Railway on 23.10.1997 and was put on dialysis. He stayed there from October, 1997 till March, 1998. He was referred to Sir Ganga Ram Hospital where the facility of transplantation was existed. For want of donor, the applicant's son was referred back by Sir Ganga Ram Hospital as discharged on 7.2.1998 to Northern Railway Hospital for putting the applicant's son on dialysis and be referred back to the hospital on availability of donor.

3. The condition of applicant's son had deteriorated posing threat to his life, the applicant got his son admitted in Ram Saran Tirath Ram Hospital, at Amritsar, which is undisputedly recognised for organ transplantation as per the Transplantation of Human Organs Act, 1994. Out of love and affection a donor was made available and after the scrutiny by the concerned Committee organ transplantation was cleared.

4. Applicant's son was admitted in Ram Saran Tirath Ram hospital at Amritsar on 2.9.1998 and Kidney transplantation was performed on 29.9.1998. Applicant submitted claim for medical reimbursement amounting to Rs.1,93,000/- which was turned down vide impugned order dated 8.6.2001.

5. Applicant preferred an appeal against the aforesaid order, which was rejected on the ground that claim of the applicant could not be acceded to as he

has rendered his son's treatment as per his own choice at a centre not recognised by the Railways. This gives rise to the present Original Application.

6. Learned counsel of the applicant by referring to the Transplantation of Human Organs Act, 1994 contends that apart from near relative a donor can be permitted who by love and affection or attachment towards recipient or for any other special reason donates the organ. The only requirement is that the matter should be placed before Committee nominated as per the proforma on an affidavit in Form 1 of the Transplantation of Human Organs Rules, 1995 of the concerned donor. On such joint application, the authorisation Committee after holding an inquiry under Section 9 (5) of the Act *ibid* grants approval for removal and transplantation of the human organ. In this conspectus, it is stated that the Committee has after verifying that the case falls within the ambit of the Act *ibid* approved the removal and transplantation of the human organ. As such the transplantation is legal.

7. Inso far as treatment taken at Amritsar in a hospital not recognised and for want of non-referral is concerned, it is stated that the same is not impediment in the light of settled position of law. In an emergent situation, when life of a person is at stack, non-referral cannot be a ground and even if the treatment is taken in another hospital, one is entitled for reimbursement of medical expenses as per *h* AIIMS rates.

8. Respondents' counsel Shri Rajinder Khatter vehemently opposed the contentions and produced the record for my perusal.

9. According to him, the applicant has by-passed the rules and taken his son to private hospital from Railway Hospital in a planned manner. Accordingly, once the Northern Railway hospital has advised the applicant to refer back on availability of suitable donor to Sir Ganga Ram Hospital taking son to Amritsar Hospital, has deprived the applicant medical reimbursement.

10. Learned counsel further states that in the appeal preferred by the applicant, he has admitted that the organ donor was not relative and also in the authorisation Committee, coram is not complete as the fourth member has not signed the approval. Accordingly, once the transplant is illegal and in violation of the Transplantation of Human Organs Act, 1994, the applicant is not entitled for medical reimbursement.

11. I have carefully considered the rival contentions of the parties and also perused the material available on record.

12. Section 9 (3) of the Transplantation of Human Organs Act, 1994 authorises not only near relative but a donor who by reason of affection or attachment towards the recipient or for any other

h

special reasons is allowed to donate the organ. Sine qua non of such a transplantation is authorisation by the authorisation Committee and its approval.

13. On perusal of the record, I find that on a joint application in a format under the Rules of the Transplantation of Human Organs Act, 1995, the authorisation Committee has approved the donation. The aforesaid conclusion of the Committee cannot be questioned. Merely because the fourth member of the Committee has not signed would not make any difference. The Committee was comprised Chairman and other two members also. Accordingly, I hold that the removal of Kidney and transplantation in the hospital is recognisable as per the Transplantation of Human Organs Act, 1994 and is a valid transplantation.

14. As regard non-referral, the Apex Court in State of Punjab Vs. Mohan Lal Jindal, 2002 Supreme Court Cases (L&S) 189 in so far as non-referral is concerned held as follows:-

"1. Leave granted.

2. We have heard learned counsel for the parties. The questions involved in the present proceedings are squarely covered by a judgment of three-Judge Bench of this Court in the case of State of Punjab v. Ram Lubhaya Bagga, (1998) 4 SCC 117. The view taken in the said decision is that when an employee requires medical treatment after the new policy dated 13-2-1995 had come into operation, he will be entitled to medical reimbursement on the basis of the new policy at AIIMS rate. It is not in dispute between the parties that the respondent suffered a heart attack on 20-7-1995 and underwent bypass surgery on 29-7-1995. According to learned counsel respondent as there was a long queue of patients at AIIMS Hospital for bypass surgery and his case was of

emergency, he had to go to other hospital. It may be so. The additional amount which he has claimed was granted by the High Court on the ground that the new policy was not sufficiently published. The said view of the High Court cannot be sustained. Consequently, the appeal is allowed by observing that the respondent will be entitled to medical reimbursement in the light of the new policy i.e. at AIIMS rates. It was however, vehemently submitted by learned counsel for the respondent that exception deserves to be made in this case as the respondent who was a Teacher could not afford such huge medical expenses which had to be incurred by him due to long queue for bypass surgery in the AIIMS Hospital and he had to go to other hospital. It is further submitted by learned counsel for the respondent that the appellants may consider his grievance. He may submit such a representation on compassionate grounds. We have no doubt that such a representation will be sympathetically considered by the appellant authorities on its own merits. The judgment of High Court will stand modified to the extent indicated herein. No costs."

In K.P. Singh Vs. Union of India, 2002 Supreme Court Cases (L&S) 761, the Hon'ble Supreme Court has made the following observations:-

"6. The last grievance, and it is of some note, is that a beneficiary of the Scheme will receive reimbursement only at the rate approved by the CGHS, regardless of the fact that in his particular town or city there are only private hospitals and no government hospital; there is, therefore, no option for him but to enter a private hospital for such treatment. It is also submitted that the approved rates are not updated by the CGHS from time to time so that what the beneficiary receives by way of reimbursement can be substantially less than the cost that has actually been incurred upon his hospitalisation. While there is, we think, merit in the submission, it is not for us to dictate what should be done. We direct that the Union of India shall immediately consider this aspect and give appropriate directions thereon. It would clearly be appropriate for it to update its approved rates on an annual or, at least, biennial basis."

15. If one has regard to the above, it is no more res integra that beneficiary of the Scheme irrespective whether the hospital is recognised or not in an emergent situation is entitled to the expenses incurred in treatment and has to be reimbursed as per AIIMS rates.

16. The three Judges Bench of the Apex Court in the case of State of Punjab & Ors. Vs. Ram Lubhaya Bagga etc. etc., JT 1998 (2) S.C. 136 has held as follows:-

"6. This Court has time and again emphasised to the Government and other authorities for focussing giving priority to the health of its citizen, which not only makes one's life meaningful, improves one's efficiency, but in turn gives optimum output. Further to secure protection of one's life is one of the foremost obligation of the State. It is not merely a right enshrined under Article 21 but an obligation cast on the State to provide this both under Article 21 and under Article 47 of the Constitution. The obligation includes improvement of public health as its primary duty. Learned counsel for the appellant on the other hand does not deny such a right but urges that the same can be placed within permissible limits by rules and policies laid down. The right claimed may be sacrosanct, which has to be given, but the same can be put within reasonable limits, under a policy which is framed after taking into consideration various factors. Thus the only question is, whether the new policy is arbitrary, unreasonable violative of any law or principle to be struck down. Of course it has to stand to the test of reasonableness and not to erode or curtail any of the constitutional or Statutory right of any employee. If not, the claim cannot go beyond the policy.

XXXX

20. The right of the State to change its policy from time to time, under the changing circumstances is neither challenged nor could it be. Let us now examine this new policy. Learned senior counsel for the appellants submits that as it gives freedom of choice to every private hospital of his own choice

anywhere in the country. The only clog is that the reimbursement would be to the level of expenditure as per rates which are fixed by the Director, Health and Family Welfare, Punjab for a similar package treatment or actual expenditure whichever is less. Such rate for a particular treatment will be included in the advice issued by the District/State Medical Board for fixing this. Under the said policy a Committee of Technical Experts is constituted by the Director of finalize the rates of various treatment packages and such rate list shall be made available to the offices of the Civil Surgeons of the State. Under this new policy, it is clear that none has to wait in a queue. One can avail and go to any private hospital anywhere in India. Hence the objection that, even under the new policy in emergency one has to wait in a queue as argued in Surjit Singh case (supra) does not hold good."

XXXX

26. No State of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its employees. Provisions of facilities cannot be unlimited. It has to be to the extent finance permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State should 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 hold to be violative of Article 21 or Article 27 of the Constitution of India."

17. If one has regard to the above, being welfare legislation, right to life is a recognised fundamental right under Article 21 of the Constitution of India. The Government servant undergoing treatment in a private hospital cannot be deprived of medical reimbursement, but it should be limited to the resources and finances of the State. Accordingly, AIIMS rates are the criteria for reimbursing the medical expenses incurred on the treatment by the employees.

18. The main crux is that medical reimbursement in the present Original Application is admissible as per AIIMS rates which cannot be denied to the applicant only on the technical ground of non-referral.

19. Hon'ble High Court of Punjab and Haryana in a recent judgment in the case of Shakuntla Vs. State of Haryana, 2004 (1) ATJ 155, observed as follows:-

"9. In the given case, saving the life of the child was paramount for the i.e. the petitioner and she had no option but to get the child in the first instance admitted in the Saxena Nursing Home, Rewari but upon their advice, for performing the operation, she had to weigh as to which institution is better equipped for saving the life of the child and as per her statement, she had been advised to take the child to Sir Ganga Ram Hospital, New Delhi. Fortunately, the child survived with efforts of the Doctor and, of course, the credit went to the institution. No doubt, the expenditure incurred may be far more than what is prescribed in the Government Hospital or in a recognized hospital. The government has recognized some of the hospitals and so far as rates are concerned, for administering medical help they, vary from one institution to the other. The only measuring law is that in case of grave emergency which hospital comes to the mind of the attendant and which hospital is considered best for saving the life of the patient. These decisions sometimes become crucial for saving the life of an individual.

XXXXX

11. Before we part with this judgment, the circumstances and the situations faced with by the government and by the citizens of this country, we feel that the State has also to look at its finances because whatever is earned, it has to be spent for the benefit of the sovereign. The sovereignty lies and vests in the citizens of this country but the same has been diluted to the extent of one divided by 100 crores. By passage of time it is being diluted every day, unless some method is adopted for stopping the dilution of the same, which obviously lies in the hands of the Parliament which is House of Wisdom of the representatives of the sovereign. We must know our needs/resources

and the day a child takes birth another mouth opens to dissipate our resources. No doubt, life is precious but this precious life is also to be looked after in a reasonable, respectable and methodological manner. When a child comes he steps in as a sovereign and he expects not only the parents to look after him/her but the State has also to play its own part because the entire income earned in the country is controllable and controlled by the State."

20. This further substantiates my conclusion.

It is trite that State action being model employer and this country is a welfare State should be reasonable and should not either arbitrary or unfair. Though the equity cannot be the sole criteria but yet equitable consideration should have application in the Rule of law. The only requirement is that one must not come with unclean hands. In the instant case, plight of the applicant is self explanatory. His only son was dying and the referred hospital has sent back the patient to report back on availability of donor. Accordingly, on availability of donor, in view of the repute of the hospital for Kidney transplantation at Amritsar, the applicant was constrained in those mitigating circumstances to take his son to that hospital. Ultimately, human organ was transplanted from a donor in accordance with the provisions of the Transplantation Act *ibid*. It is also incumbent as per Rule 616 of the Indian Railway Establishment Code I upon the respondents to have reimbursed the cost of medical attendant or treatment of transplantation. The basic requirement of medical reimbursement is expenditure has to be incurred in medical treatment. The concept of legal or illegal treatment is illogical. The rational is that the treatment has been taken and the expenses are incurred which is

established from the essential certificate issued by the concerned hospital. The rejection on the ground that hospital is not recognised shows that the respondents have no respect to the human compassion and are not concerned with the life of family of the erstwhile employee. This callous attitude and inaction actuated with arbitrariness resisted on hyper technical consideration is not sustainable. This violates Article 21 of the Constitution of India.

21. In the result, for the foregoing reasons OA is allowed. The impugned orders are quashed and set aside. The respondents are directed to reimburse to the applicant medical expenses incurred on the treatment of his son to the tune of Rs.1,93,000/-. This shall be done within a period of two months from the date of receipt of a copy of this order. However, the request for payment of interest is turned down. No costs.

S. Raju

(SHANKER RAJU)
MEMBER (J)

/ravi/