

Central Administrative Tribunal, Principal Bench

(NS)

(19)

O.A. No. 2023/2003

New Delhi this the 6th day of April, 2005

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Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

Dr. A.K. Belwal
S/o Shri P.N. Belwal
Adviser,
Tariff Commission,
Lok Nayak Bhawan,
New Delhi.

R/o 137, Sukhdev Vihar,
P.O. Jamia Nagar,
New Delhi-110025.

...Applicant

By Advocate: Applicant in person.

Versus

Union of India through

1. Secretary,
Ministry of Health,
Nirman Bhawan,
New Delhi-110 001.
2. Secretary,
Department of IP&P,
Udyog Bhavan,
New Delhi.
3. Chief Secretary,
Delhi Government,
Indira Gandhi Stadium,
New Delhi.
4. Secretary,
Ministry of Home Affairs,
Freedom Fighters Division,
1st Floor,
Lok Nayak Bhawan,
New Delhi.

M. A. Khan



5. The Chief Secretary,
Government of Uttaranchal,
Secretariat,
Dehradun,
Uttaranchal.

6. The Secretary,
Tariff Commission,
Lok Nayak Bhavan,
New Delhi. Respondents

By Advocate: Shri R.N. Singh.

ORDER

The applicant is aggrieved by the rejection of his medical reimbursement claim for the treatment of his father at his residence.

2. The applicant is an officer of the Indian Economic Service. He was working as an Adviser in Tariff Commission. His father Shri Purna Nand Sharma, was a freedom fighter and was drawing Freedom Fighters Pension. However, his name was included in the CGHS card of the applicant as dependent member of the family. The applicant was availing medical facilities for his treatment from CGHS. The applicant's father, Shri Purana Nand Sharma, fell critically ill, in semi conscious state, from March 2002 to 19th July, 2003 on which date he breathed his last. Reimbursement is claimed for the nursing charges for the nurse employed to look after his ailing father, the cost of medical attendant, who attended the patient and the cost of food and medicines incurred on the treatment. The claim has been rejected. The applicant challenges the same in this OA, inter alia, he also pleaded that his father being a freedom fighter also was eligible for treatment at Government expenses as per rule and the expenses incurred on his treatment are reimbursable either as CGHS beneficiary or as freedom fighter. Hence this OA.



3. Respondent Nos.1 and 2, the Government of India and the Secretary, Department of IP&P in their counter-reply raised a preliminary objection that the father of the applicant being a freedom fighter drawing pension was not dependent on the applicant and his name ought not to have been included in the CGHS card of the applicant when his father had received a separate freedom fighter card allotted in his name. There is no provision for reimbursement of the cost of expenditure incurred for visiting of the private doctor at the residence. CS (MA) Rules are applicable to those Central Government employees who reside in the non-CGHS area or for the treatment taken by them in non-CGHS covered area. The applicant is holding a CGHS card and the treatment was also taken in a CGHS covered area and the medical claim is to be considered under the CGHS Rules. There is no provision for reimbursement of the expenditure incurred for utilizing the services of a special nurse at the residence. The OPD medicines are also not reimbursable under CGHS as they are issued from CGHS dispensary. There is a provision for domiciliary visits by CGHS doctor. The government does not have unlimited resources and the reimbursement of the medical claim is to be done in accordance with the CGHS Rules. It is, therefore, prayed that the OA should be dismissed.

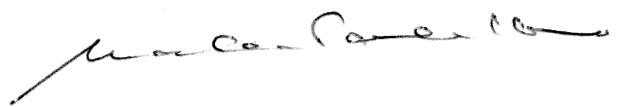
4. The respondent No.3, the Chief Secretary, Government of NCT of Delhi in a separate reply has submitted that the medical reimbursement claim of the father of the applicant, who was Freedom Fighter, is to be settled by the Government of India under CGHS Rules, therefore, the Tribunal has no jurisdiction to entertain it. The father of the applicant was not a recipient of Delhi Union Territory Freedom Fighter's Pension, so the Government of NCT of Delhi would not be able to reimburse the medical expenses

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incurred on the father of the applicant as a Freedom Fighter. The other allegations were also controverted.

5. In the additional reply filed on behalf of the respondents, inter alia, it was stated that the expenses incurred for engagement of special nurses at the residence is not reimbursable and the reimbursement of Rs.15,204/- to the applicant against bill No.18903 for medicines purchased from local chemist, which is the subject matter of this OA was rejected as CGHS Rules do not permit it. The applicant had submitted 4 bills for Rs.15250/-, Rs.15260/-, Rs.250/- and Rs.250/- for nursing and attendant charges and for caring his father at his residence with the request to reimburse the same. OM No.1-4/94-R&H/CGHS (P) dated 15.9.1995 issued by the Ministry and Family Welfare (Annexure AR-3) provided that special nurse/ayah/attendant charges at the rate of Rs.150/- and Rs.75/- respectively per shift for 12 hours can be reimbursed for engaging them subject to the condition that an opinion from the medical officer in-charge or an equivalent Medical Officer of the hospital should be given that the services of special nurse/attendant are essential for the recovery/prevention of serious deterioration in the condition of the patient. However, this OM further provided that reimbursement to pensioners, ex-MPs and Freedom Fighters will be made from the CGHS Head by the respective Additional Deputy Directors of CGHS city concerned. Keeping in view the rejection of reimbursement of medical claim for nurse/attendant charges by CGHS HQ., the respondent No.6, the Tariff Commission, has not reimbursed his pending 4 bills for nursing/attendant charges. These bills were submitted by the applicant on the basis of the recommendation of the Escorts Hospital for which he did not take prior permission from the respondents.



6. We have heard the applicant, who argued in person, and the learned counsel for the respondents at length.

7. The applicant is seeking relief of reimbursement of the expenses incurred by him on the engagement of a nurse, medicines purchased and the fee paid to private medical attendant for treatment of his father at his residence. In the alternative he is seeking relief that his father being a Freedom Fighter was also eligible for reimbursement of medical claim in that capacity.

8. With regard to the claim of reimbursement of expenditure incurred on the treatment of his father under the Freedom Fighters' Medical Attendant Rules, suffice to mention that this Tribunal does not have jurisdiction to entertain this claim. Section 19 of the Administrative Tribunals Act, 1985 allows a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal to make an application to the Tribunal for redressal of his grievance. Section 15 of the said Act confers jurisdiction, powers and authorities on the Tribunal, which was exercised before the Act came into force by all courts except the Supreme Court, *inter alia*, all service matters concerning a person appointed to any civil post under the State. Clause (q) of Section 3 of that Act defines "service matters" meaning "all matters relating to the condition of a service in connection with the affairs of the Union or of any State.....as respect to (v) any other matter whatsoever".

9. The claim for reimbursement of the medical expenses incurred by the father of the applicant as Freedom Fighter, is, for no stretch of reasoning, can be construed to be a condition of service of the applicant. The expression "any other matter, is to be read in the context of the definition of service matters given in rules 3(q) so interpreted we are

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constrained to hold that the claim of the father of the applicant for reimbursement of his medical expenses as a Freedom Fighter would not be a service matter as defined by Section 3(q)(v) of the Administrative Tribunals Act. Thereby meaning that it will not be a matter falling within the jurisdiction of the Tribunal under Section 19 read with Section 15 of the said Act. The claim of the applicant to that extent deserves to be outrightly rejected for the aforesaid reason.

10. Adverting to the claim of the applicant for reimbursement on the ground that his father being a dependant member of his family was eligible for treatment under the CGHS Rules suffice to mention that the applicant has not been able to cite any rule or the administrative instructions of the Government in the matter under which the claim for reimbursement of the expenses incurred on the engagement of a nurse, payment of fee to a private doctor and the medicines purchased from the market is permissible under CGHS rules. The applicant refers to Rule 7 of Central Civil Service (MA) Rules which has provided as under:-

“7. (1) If the authorized medical attendant is of opinion that owing to the absence or remoteness of a suitable hospital or to the severity of the illness, a Government servant cannot be given treatment as provided in clause (a) of sub-rule (1) of Rule (6), the Government servant may receive treatment at his residence.

(2) A Government servant receiving treatment at his residence under sub-rule (1) shall be entitled to receive towards the cost of such treatment incurred by him a sum equivalent of the cost of such treatment as he would have been entitled, free of charge, to receive under these rules if he had not been treated at his residence.

(3) Claims for sums admissible under sub-rule (2) shall be accompanied by a certificate in writing by the authorized medical attendant stating -

(a) his reasons for the opinion referred to in sub-rule (1); and

(b) the cost of similar treatment referred to in sub-rule (2).

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Note 1 – If the authorized medical attendant certifies that the Government servant required hospital treatment but that no accommodation was available at the recognized hospital, then the fees paid for medical treatment at the patient's residence may be reimbursed to the extent of what would have been paid by the Government had the treatment been received at the hospital.

Note 2 – For the purpose of calculating the sum admissible under this Rule in any particular case the charges for accommodation and diet should be excluded and only the charges for medical attendance, nursing medicines, including injectables and dressings taken into account".

11. A bare look at this rule will show that the requirement of the rules are not fulfilled by the applicant. The treatment was taken by the applicant within the CGHS service area. The authorized medical attendant has not given any opinion that owing to the absence or remoteness of a suitable hospital or to the severity of the illness, the applicant's father could not be given treatment as provided in clause (a) of sub-rule (1) of Rule 6 and he may receive treatment at his residence. The medical claim which is to be submitted by the Government employee has to be accompanied in writing by the authorized medical attendant stating the reasons for his opinion referred to in sub-rule (1) and the cause of similar treatment referred to in sub-rule (2). The reimbursement of this claim de hors of this Rule will not be enforced on the respondents.

12. Moreover, the Government of India, Ministry of Health and Family Welfare OM dated 15.9.1995 (Annexure AR-3) has provided as under:-

" Subject: Reimbursement of special Nursing and Aya/Attendant Charges to CGHS beneficiaries – Ceiling regarding.

The undersigned is directed to say that the beneficiaries covered under CGH Scheme are eligible for claiming reimbursement of expenses incurred by them for engagement of a

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special nurse and/or aya/attendant as advised by treating doctor/specialist and the amount of such reimbursement is limited to the amount which is in excess of 25% of the pay of the Government servant concerned for the period for which special nursing was necessary. Keeping in view the increase in pay and allowances and wages of nursing and aya/attendants and in order to simplify the existing procedure. It has been decided to fix ceiling rates of special nurse and aya/attendant for reimbursement to CGHS beneficiaries. The ceiling rates are indicated below:-

Special Nurse - Rs.150/- per shift of 12 hours.

Aya/Attendant - Rs.75/- per shift of 12 hours.

2. The reimbursement of special charges for nurse and aya/attendant at above rates is subject to the condition that the medical officer-in-charge or an equivalent medical officer of the hospital should have given a certificate to the effect that the services of a special nurse/aya/attendant were essential for the recovery/prevention of serious deterioration in the condition of the patient.

3. The reimbursement in respect of Central Government employees and members of their families covered under CGHS will be borne by the respective Ministries/Departments from Service Head. As regards pensionary, MPs, Freedom Fighters etc. the reimbursement will be made from CGHS Head by the respective Additional/Deputy Directors of the CGHS concerned.

4. These orders will be effect from the date of issue.

5. This issues with the approval of Finance Division vide Dy. No. 3022/95-F.II dated 6.9.1995".

13. The Rule 2 permit reimbursement of expenses of engaging sub nurses/ayah/attendant and has prescribed the rate at which this reimbursement will be made but the engagement has to be advised by the treating doctor/specialist under the CGHS Scheme. Such an advise by a private doctor will not be covered and made the applicant eligible for reimbursement of expenses under this OM.

14. The applicant has produced a copy of the order of the Single Bench of the Delhi High Court dated 5.4.2002 in CW No.4305/2001 titled V.K. Gupta Vs. U.O.I. & Another. The writ petitioner was suffering from cardiac disease. The Hon'ble High Court allowed him to undergo treatment and open heart surgery at EHIRC and a communication dated 24.5.2000 was sent to the Medical Superintendent of the said hospital permitting the petitioner to have treatment as per his entitlement and for admission to the private ward. The said communication was also endorsed to the Medical Officer In-charge, CGHS with whom the petitioner was duly registered. After the treatment the medical claim of the applicant was reimbursed as per approved package rate. The petitioner wanted full reimbursement. The Hon'ble Court after considering all the facts, the rules and the case law came to the view that the cost of medical treatment had been rising over the period of time and the respondent cannot deny the actual reimbursement from a hospital for treatment on the basis of applying the rate as per the previous memorandum which was intended for a period of two years and was subject to revision. It was also observed that the respondents were themselves responsible for not revising the rates. It was accordingly held that the petitioner was entitled to full reimbursement of the actual expenses incurred at the EHRIC where he was duly referred for specialized treatment by the respondents after according permission. The facts of the case are clear. The treatment was taken at an hospital for specialized treatment with the permission of the respondent – Government. In the present case no such permission was obtained by the applicant for engaging a private nurse or getting treatment from a private doctor or purchasing medicines from the market details of which has also not been given. No advantage of the judgment, therefore, can be given to the applicant.

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15. The applicant has next cited Pradeep Kumar Sharma Vs. State of Haryana and Others, 2003 (1) RSJ 783. The writ petitioner wanted reimbursement of the medical bill of his father who was suffering from kidney failure for which he was referred for specialised treatment in Batra Hospital, New Delhi. Right kidney transplant operation was done. The State of Haryana gave ex-post facto approval to the petitioner for getting the treatment of his father as an indoor patient in the year 1997. All the medical expenses incurred by the petitioner were reimbursed. The petitioner then submitted a claim for reimbursement of the medical expenses incurred on the treatment of his father as out-door patient/follow up treatment. The bills were rejected. The Hon'ble Punjab and Haryana High Court held that the father of the applicant was a member of the family, although he was getting a salary of over Rs.5699/- and the respondent had earlier reimbursed the medical claim of the petitioner with regard to the disease of his father as indoor patient acknowledging that the father was a dependent member of the family and directed the reimbursement of the medical bills. The judgment was on its own peculiar facts. The judgment is distinguishable on facts. The claim of the employee for treatment of his father as Indoor patient was fully reimbursed but expenses on treatment as Indoor patient was rejected since father was receipt of pension. The claim of the applicant has not been rejected for the reason that the father of the applicant was getting a Freedom Fighter's pension and was not a member of the family depending upon the applicant. It was rejected because the medical rules did not permit such reimbursement.

16. The applicant next relied upon another judgment of the Hon'ble Punjab and Haryana High Court in Renu Saigal Vs. State of Haryana, 1991 (1) ATJ 125. The Writ

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Petitioner was a Haryana Government employee. She was suffering from Hairy Cell Leukemia. She got treatment as indoor patient at PGI Chandigarh. The doctors there prescribed a course of medicine for her and issued an Essentiality Certificate, certifying a very expensive medicine which has to be administered to her periodically was not available in the stock of PGI and had to be purchased from outside. They also certified that the petitioner's treatment was a prolonged one. The cost of medicine was likely to be in the range of Rs.20,000/- to Rs.30,000/- per month. The Writ Petitioner submitted the claim for reimbursement. During the period she got treatment as indoor patient and also applied for some advance for purchasing the medicine. Some advance was sanctioned. The Writ Petitioner again applied for advance but no action was taken since the government was contemplating a change in the policy with respect to outdoor patients who were suffering from chronic diseases as the policy provided that no employee would be entitled to reimbursement of more than Rs.6,000/- per annum. The Writ Petitioner challenged the said clause of the policy and for a direction to the respondents to reimburse all the bills submitted. Her claim was allowed. The facts were totally distinguishable. The treatment was taken in accordance with rules applicable and the rejection of reimbursement of the costly outdoor treatment as per the policy decision of the Government which was not approved by the court. The applicant has also referred to another order passed by the Principal Bench of the Tribunal on 27.3.203 in OA No.2479/2001 in Sham Sher Singh Vs. U.O.I. & Others. The facts of this case are materially different. The applicant was admitted to Ordnance Factory Hospital, Muradnagar from where he was referred to NM Hospital. His condition became serious so he was recommended to the EHIRC. He underwent CABG-3. A sum of Rs.1,09,000/-



was paid as advance. The EHIRC gave a bill of Rs.1,81,162/- to the applicant and the applicant applied for payment of the balance amount of Rs.72,163/- which was rejected. The Tribunal allowed reimbursement of the remaining sum. The facts of the case, as such, would show that the treatment at EHIRC was in accordance with the rules and the respondents themselves have reimbursed major part of the bill of the hospital and the claim is with regard to the payment of the balance amount in dispute. The facts of the present case are absolutely different. The treatment was not taken by the applicant's father in accordance with the rules and with the permission of the respondents.

17. For the reasons stated above, we find that the OA has no merit and the same is dismissed but without any order as to costs.

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(M.A. Khan)
Vice Chairman (J)

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