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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2231/2003

NEW DELHI THIS 16th DAY OF May 2005

HON'BLE SHRI JUSTICE M.A. KHAN, VICE CHAIRMAN (J)
HON'BLE SHRI S.A. SINGH, MEMBER (A)

O P Nahar S/o Sh. Dev Karan,
R/o C-5, M S Flats Tilak Lane, New Delhi
(BY ADVOCATE: Sh. Yogesh Sharma)

.....APPLICANT

VERSUS

1. Union of India through Secretary
Department of Legal Affairs, Ministry of Law and Justice,
Shastri Bhawan, New Delhi

2. Director General, Central Government Health Scheme,
Ministry of Health and Family Welfare, Nirman Bhawan,
New Delhi

.....RESPONDENTS

(BY ADVOCATE: Sh. S K Gupta)

ORDER

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicant is a Legal Advisor and Ex. Officio Additional Secretary (Conveyance) in the Department of Legal Affairs, Ministry of Law and Justice. Applicant's mother Smt. Phooli Bai being the beneficiary of Central Government Health Scheme (CGHS) was admitted in an emergency situation on the night of 23/24.2.2002 in the Indraprastha Apollo Hospital, Mathura Road, Delhi. She was discharged from the Hospital on 01.3.2002. The applicant paid a total amount of Rs.43, 680/- to the Hospital for treatment and requested for ex-post-facto sanction. The respondents on 11.3.2002 granted this and the medical claim bill was submitted to respondent No. 1 for re-imbursement of the total amount.

2. Respondent No.1 reimbursed an amount of Rs. 21,577/- on 16.4.2002 after deducting a sum of Rs. 22,103/-.

3. The applicant was informed that he was only entitled to be paid at rates approved in OM dated 18.9.1996. Aggrieved by this, he has filed the present OA seeking quashing of OM dated 25.10.2001 as it restricts re-imbursement of medical claim to the rates prescribed in 1996 and quashing letter dated 27.8.2002 restricting the re-imbursement to a sum of Rs.22, 103/- and asked for the balance amount of Rs. 22,103/- along with interest from 16.4.2003.

[Signature]

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4. The main grounds of the applicant for seeking the relief is that restricting the medical claim for Indraprashtha Apollo Hospital to the rates approved in 1996 is discriminatory and violates Article 14 of the Constitution. Moreover, respondents themselves vide their letter of 2.8.2002 have approved new rates in 2001, applicable prospectively. Their action in restricting the applicant's claim to rates of 1996 was arbitrary and unjust. Further, prescribing a higher rates for Grade 'B' Hospital as done in their OM dated 7.9.2001 in comparison for 'A' Grade Hospital is not only illogical but is also violates article 21 of the Constitution. The case of the applicant is fully covered by the judgement-dated 8.8.2002 of the Principal Bench, CAT in OA 1516/2002 in the case of R.P. Aggarwal Vs. Union of India and Ors. The applicant also relied upon the decisions of the Tribunal in the OA No. 131/2002 in the case of **Javed Ahmad Vs UOI, Milap Singh Vs. Union of India and Anr (2004 VAD (Delhi) 529, V K Gupta Vs. UOI and Anr (97(2002) DLT 337** wherein it has been held that petitioners were entitled for full medical re-imbursement.

5. The respondents in their counter reply and also in the oral submission vehemently contested the averments of the applicant pleading that the Government of India's instructions dated 25.10.2001 (Annexure A-II) is a policy instruction of Government of India in financial matters and the wisdom cannot be judicially scrutinized. In support they cited decision of the apex court in the case of **State of Rajasthan Vs. Sevanivatra Karamchari Hitkari Samiti (1995(2) SCC 117) and Sher Singh Vs UOI (1995) 6 SCC 515**. The Government is within its right to restrict medical claim keeping in view the limited resources available to it as held by 3 Judges Bench decision in the cases of **State of Punjab Vs. Ram Lubhaya Bagga (1998) 4 SCC 117 and State of Punjab and Ors Vs. Mohan Lal Jindal (2002 SCC (Lands) 189**). The applicant in view of above judgement has no right to the additional expenses.

6. The instructions of the Government of India (Ministry of Health and Family Welfare) dated 2.8.2002 (Annexure A-7) are prospective in operation and therefore applicant cannot draw any benefit. The applicant has taken his mother for treatment in February/March 2002 while the Government of India instructions were issued on 2.8.2002. The Hon'ble Supreme Court in the case of **Tapti Mitra Vs UOI (placed at Annexure R-2)** has held that these instructions were prospective and thus there was no reason to challenge the order.



7. Further there is no discrimination or violation of Articles 14 and 16 of the Constitution as alleged by the applicant in view of the principles of law laid down in the case of **Wazir Singh, JBT Teacher and Ors Vs State of Haryana (AIR 1996 SC 889)**.

8. The applicant is also barred by limitation as he challenged the Government of India instructions dated 21.10.2001 and filed the application in 2003. This application is barred by limitation in view of Apex court judgement in the case of **Ramesh Chand Sharma Vs Udham Singh Kamal (JT 1999 (8) SC 289)**.

9. The respondents stated that there is no classification of Hospital as Grade A or B under the scheme. Specialised committees inspect the Hospitals before they are recognised. Under the scheme, CGHS beneficiaries are allowed treatment in 24 hospitals as per the OM dated 18.9.96. In November 2000, tenders were called for fresh recognition of private hospitals and a list of 55 recognized Hospitals was issued vide Department of Health OM dated 18.9.2001. Indraprashtha Apollo Hospital along with some other hospitals did not form part of this list, as they did not agree to the terms and conditions of the tender. However, vide orders dated 25.10.2001 CGHS beneficiaries were given the benefit of taking treatment in these hospitals subject to the condition that reimbursements would be restricted as per Package Bill Rates as given in the Department of Health OM dated 18.9.1996. Subsequently Indraprastha Apollo Hospital agreed to the terms and conditions contained in the tender documents and signed the MOU after which, the hospital was recognized vide Department of Health OM 02.8.2002 with revised bill rates. Under CGHS rules reimbursements are made according to the rates fixed by the Ministry of Health and Family Welfare and payment is not as per actual charges because the Government has limited resources. The Supreme Court in the judgement of the Case of **RL Bagga Vs State of Punjab** has upheld the principle of limiting the reimbursement.

10. We have heard the counsel for the parties and gone through the documents brought on record. During oral submissions, the counsel for the parties forcefully pleaded their case. It is not disputed that the mother of the applicant was admitted in Indraprastha Apollo Hospital in view of a medical emergency. Subsequently respondents gave ex post facto sanction for treatment in that hospital and have reimbursed part of the total bill. The short question before the Tribunal is whether the "Package Bill Rates" approved by the Ministry vide OM dated 18.9.1996 will apply or would the applicant be entitled to re-imbursement of balance amount of Rs.22, 103/- or any other sum. The applicant has asked for quashing of OM dated 25.10.2001 and letter dated 27.8.2003 and reimbursement of the balance amount of Rs.22, 103/-.



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11. The present controversy has erupted because the CGHS and Indraprastha Apollo Hospital had not reached an agreement on the revised Package Bill Rates when the mother of the applicant was admitted to the Hospital and the Hospital was not willing to treat her at the earlier Package Bill rates. Subsequently, this dispute was resolved and the Package Bill Rates were updated vide OM 2.8.2002.

12. The judgement of State of Punjab Vs. R.L. Bagga would not come to the rescue of the respondents for the reason that in the present case the question is not the right of the respondents to limit medical claims but the right of the applicant to be reimbursed as per the revised rates.

13. It is not disputed that the mother of the applicant was treated at the Indraprastha Apollo Hospital in an emergency and her treatment was approved by an ex-post-facto sanction. It is also not in doubt that the respondents had issued letter dated 25.10.2001 permitting treatment in Apollo Hospital but restricting reimbursements to the package rates approved in OM dated 18.9.96. The result of this letter is that on the date on which the mother of the applicant was admitted two sets of rates existed- one, those applicable to hospitals that had accepted the tender conditions and two, those who had yet to accept the terms. However, CGHS beneficiaries could avail of treatment in either of these hospitals. The short question is, then, is it correct on the part of the respondents to reimburse different amounts for same treatments just because they have not been able to come to an agreement with the hospital where they are allowing treatment? Clearly, this is inequitable for the reason that the patient hardly has a choice in the matter in an emergency. The fact is that on the date the mother was admitted no agreed bill rates existed but treatment at the hospital was permitted. Restriction imposed by letter-dated 25.10.2001 to old bill rates is then arbitrary. In view of the ex-post-facto sanction, the rates applicable would be those that were finally agreed to.

14. In view of the foregoing, we direct that the applicant be reimbursed at the bill rates finally agreed to with the Indraprastha Apollo Hospital by the respondents. The reimbursement would be restricted to the difference between the bill rates and the amount already reimbursed. With these directions, the OA is disposed of.


(S.A. SINGH)
MEMBER (A)

/kdr/


(M.A. KHAN)
VICE CHAIRMAN (J)