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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 2904/2003

New Delhi this the 2nd day of April, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

Shri A.D. Malhotra,
S/O Shri Uttam Chand,
Employed as Head Clerk,
'D' Division, C.P.W.D.,
New Delhi.

..Applicant

(By Advocate Shri D.R. Gupta)

VERSUS

Union of India through

1. The Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.
2. The Director General (Works),
C.P.W.D., Nirman Bhawan,
New Delhi.
3. The Director General (Health Services)
C.G.H.S., Nirman Bhawan, New Delhi.
4. The Chief Engineer NDZ-III
C.P.W.D. Sewa Bhawan, R.K.Puram,
New Delhi.

..Respondents

(By Advocate Mrs. Shail Goel)

ORDER

By this OA applicant has sought the following reliefs:

- " i) to allows the application with exemplary cost on respondent;
 - ii) to quash and set aside the decision of the respondents as communicated by the Executive Engineer (Hqrs.) CPWD after declaring it illegal;
 - iii) to direct the respondents to reimburse the medical claim of the applicant for Rs.82,200/- with interest thereon @ 18% p.a. within a period of two months, failing which the respondents should be made liable for penal interest for further delay;
 - iv) any other order which the Hon'ble Tribunal may deem fit, just and proper in the facts and circumstances of the case and to meet ends of the justice."
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2. It is submitted by applicant that he had been operated earlier but it was causing him some problem so he consulted the Doctor at Safdarjang Hospital who recommended total hip replacement on 18.8.2001.

3. On 20.8.2001 applicant had severe pain in the leg and he was admitted in Orthonova Hospital where he was operated for total hip replacement. He incurred expense of Rs.82,2000/- as per Annexure A-3. Applicant filed the claim by restricting it to Rs.66,945/- whereas in terms of OM dated 7.9.2001 the expense has been raised to Rs.91,350/-. As per OM dated 7.9.2001 Govt employees members of their families may take treatment from any recognized hospital and the powers to grant permission was delegated to Head of Departments (HODs). Therefore, applicant had applied for permission also from his HOD but no reply was given. He had to be operated in emergency which was certified by the Surgeon of Orthonova Hospital yet his claim was rejected vide letter dated 6.11.2003 by observing as follows:-

"The case has been considered, but the request has not been acceded to by the competent authority and as such this office regrets its inability to reimburse the claim as decision of the Orthopaedic Surgeon that the case has no emergency".

In these circumstances he had no other option but to file this OA.

4. OA is opposed by respondents who have submitted that the Orthopaedic Surgeon in the Directorate of Health Services opined that there was no emergency, therefore, applicant's contention that his hip replacement had to be done in emergency is not tenable. Otherwise CGHS beneficiary who wants to take treatment in a private hospital has to (i) obtain recommendations of the specialized Doctor in CGHS for taking treatment in the Private Hospital, (ii) obtain the prior permission of the Head of the Department for taking treatment in the Private Hospital; and (iii) establish that the treatment was taken in emergency. The applicant neither obtained recommendations of the specialized Doctor of CGHS nor obtained prior permission of the Head of the Department for taking treatment in the Private Hospital. The Senior Orthopaedic Surgeon in the Directorate of Health Services on the basis of prescription slips, test report and



other records made available to him, being an expert can very well decide whether the applicant was in dire need of THR on emergency basis or could not have obtained prior permission of the Head of the Department for taking treatment in a Private Hospital. The Orthopaedic Surgeon in the Directorate of Health Services also did not find the case as that of Emergency. The applicant is not entitled for the re-imbursement of his medical expenses as claimed.

5. As far as OM dated 7.9.2001 is concerned they have submitted it is not applicable as applicant had taken treatment from 20.8.2001 to 25.8.2001 i.e. prior to the OM dated 7.9.2001 coming into force. Moreover it is evident that it was not a case of emergency because applicant got admitted on 20.8.2001 but even on 21.8.2001 he was not prepared for THR. The applicant got himself admitted in the Private Hospital even before his application for seeking treatment could reach in the office of the Head of the Department. The Doctor in Safdarjang Hospital did not recommend the applicant's treatment in a private recognized Hospital. As per OM dated 7.3.2000 the applicant was not entitled to receive the treatment in the Hospital of his choice without obtaining prior permission of the Head of the Department. The Expert Orthopaedic Surgeon in the Directorate of Health Services did not find the case of the applicant as an emergency. That in Para 8 of the above OA the applicant has claimed for Rs.82,200/- with interest thereon at the rate of 18 % per annum whereas in the Main Petition he has claimed for re-imbursement of the expenditure to the tune of Rs. 66,945/-. The claimant himself is not sure of the medical expenses incurred by him. They have thus prayed that OA may be dismissed.

6. I have heard both the counsel and perused the pleadings as well. Admittedly applicant was treated from 20.8.2001 to 25.8.2001 whereas OM dated 7.9.2001 would come into operation from prospective date only, therefore, OM 7.9.2001 would not at all be applicable in the present case. In August, 2001 the relevant OMs would be 7.3.1995, 7.3.2000 and 28.3.2000. OM dated 7.3.2000 delegated the power to HOD for grant of permission for indoor treatment on the basis of medical prescription issued to the CGHS beneficiary. Of course reimbursement in case of treatment obtained in emergency would



be subject to item wise ceiling (page 28). The OM dated 28.3.2000 further liberalised the policy by stating that the Central Govt. employees or their families may be permitted to avail of medical facilities in any recognized hospital subject to the condition that they will be reimbursed medical expenses at the rates fixed by Govt. The ceiling fixed for Hip replacement as per OM dated 7.3.1995 was Rs. 35,000 + Rs. 5000 as the cost of bone cement. It was further made clear that reimbursement of cost of implant would be subject to following conditions:

“(i) The beneficiary should have taken treatment in a Government/Private recognized hospital with prior permission of competent authority.

(ii) The beneficiary should have purchased the implant on the recommendations of the Orthopaedic Specialist of the recognized hospital and on the basis of the lowest of three quotations.

(iii) The treating Orthopaedic specialist of the recognized hospital will give a certificate in writing to the effect that the implant has been implanted successfully and is functioning satisfactorily.

The above ceiling will be effective from 1.4.1995 and will remain in operation for a period of five years’.

From the perusal of above OM's and reply filed by respondents, 2 things are clear that either the beneficiary should obtain prior permission of HOD for taking treatment in private Hospital on recommendation of specialized Doctor in CGHS or establish that the treatment was taken in emergency. In this backdrop, if the facts of present case are seen applicant's case does not fall in the 1st category inasmuch as though applicant applied for permission from HOD on 18.8.2001 but before the application could even be placed before the HOD he got himself admitted in Orthonova Hospital. Moreover even though CGHS Doctor had recommended THR but it was not recommended to be done from a recognized Hospital, therefore, applicant's case does not get covered under the 1st category. As far as admission in emergency is concerned, we have two divergent views. The Doctor who attended on him in Orthonova Hospital had issued certificate on 21st August, 2001 that applicant was admitted in emergency with severe pain (L) hip and was



being prepared for total hip replacement but the Orthopaedic Surgeon of CGHS has opined as follows:

“As per the discharge slip, the patient had non union of fracture neck of femoral head which is not an emergency. The patient had injury in 1999”.

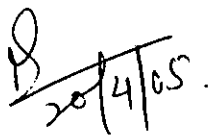
Now the question that arises for our consideration is whether the Doctor who attends the patient in emergency is competent to issue the emergency certificate or a Doctor who has not even seen the patient.

7. In my considered opinion the Doctor who attends the patient is the best Judge to decide whether it is an emergency case or not because he only can see the ground reality. We do not know whether full and proper facts were projected before the CGHS Doctor or not. It is correct that initially applicant was operated in 1999 but applicant has stated that there was some complication and he was operated again but since the pain was persisting he went to Safdarjang Hospital where THR was suggested. Thereafter he was in acute pain therefore, had to get admitted in emergency in Orthonova. It is also not clear whether the certificate issued by Orthonova Sr. Surgeon was placed before the Surgeon of CGHS or not because it is not the case of respondents that the certificate issued by Orthonova was wrong. In these circumstances, I do not think a Doctor ^{who} ~~was~~ had not even attended the patient could have stated whether applicant was admitted in emergency or not. Respondents have also not been able to show me any rule that final authority to decide such cases vested with CGHS. Moreover, it is also seen that Govt. is further liberalising this scheme which is evident from the fact that in September, 2001 i.e. immediately after the applicant was treated it was decided by Govt. that beneficiary will have the option of availing specialized treatment/diagnostic tests at CGHS recognized Hospitals/diagnostic centers of his/her choice after the specialist of CGHS/Govt. hospital recommends the procedure (page 30). At this juncture it would also be relevant to note that even on 28.3.2000 Govt. had decided that the Central Govt. employees and the members of their families may be permitted to avail of medical facilities in any of the Central Government, State Government Hospitals and the Hospitals recognized by the



State Government/CGHS Rules/CS (MA) Rules, 1944 as well as the hospitals fully funded by either Central Government or the State Government subject to the condition that they will be reimbursed the medical expenditure at the rates fixed by the Government under the CGHS Rules/CS(MA) Rules, 1944 or the actual expenditure incurred, whichever is less. Therefore, it is clear that the Govt. was liberlising the Scheme step by step for the benefit of Govt. servant and whenever a beneficial scheme is introduced, effort should be made to give the intended benefit to the employee.

8. In view of the above discussion the order dated 6.11.2003 is quashed and set aside. It is held that applicant is entitled to get the relief specially when no body has stated that the certificate given by Orthonova is wrong nor any action has been taken against Orthonova for having issued a wrong certificate. Admittedly Orthonova is a recognized hospital as it is shown at serialNo.6 on page 27. Accordingly the OA is partly allowed. Respondents are directed to reimburse the applicant to the extent it was permissible under the prevalent admissible rates. This shall be done within three months from the date of receipt of a copy of this order. It is made clear that no interest would be payable to the applicant.


(Mrs. Meera Chhibber)
Member (J)

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