

CENTRAL ADMINISTRATIVE TRIBUNAL**CHENNAI BENCH****OA/310/00171/2016****Dated the day of December, Two Thousand Nineteen****CORAM : HON'BLE MR. T. JACOB, Member (A)**

S. Raghupathy,
Lab Assistant Gr. I(4),
Business Processes Division,
Central Leather Research Institute (CLRI),
Chennai 600020.

....Applicant

By Advocate M/s. D. Nagasaila

Vs

1. Director,
Central Leather Research Institute,
Adyar, Chennai 600020.

2. Director-General,
Council of Scientific and Industrial Research (CSIR),
Anusandhan Bhavan, 2 Rafi Marg, New Delhi 110001.

3. Union of India,
Represented by its Secretary,
Ministry of Science and Technology,
Technology Bhavan, New Mehrauli Road,
New Delhi.

....Respondents

By Advocate Mr. T. Ravikumar (R1 & R2)

ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member (A))

The applicant has filed this OA under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"a. To call for the records and set aside letter No.35-02(27)/2013-HR-III dated 27.12.2012 of the I Respondent r/w OM No.7(2)/EIII/2013 dated 04.04.2013 issued by the II Respondent r/w order dated 05.09.2013 issued by the I Respondent r/w minutes of the Health Services Committee meeting held on 31.07.2015 and

b. Direct the respondents to reimburse to the applicant the claim of Rs. 2,44,080 with interest and pass such other orders that the Tribunal may deem fit and proper and thus render justice."

2. The facts of the case as stated by the applicant are as follows:

The applicant is currently employed by the First Respondent-Central Leather Research Institute as a Lab Assistant. He is governed by the Central Services (Medical Attendance) Rules, 1944. As per the Rules 3 and 6 of the said Rules, any Central Government employee is entitled to Medical Attendance and treatment and if any expenses have been incurred on receipt of such medical attendance and / or treatment, the amount paid by the employee will be reimbursed to him on production of a certificate in writing by the Authorised Medical Attendant. The applicant states that he met with a road accident on 12.03.2012 and suffered multiple fractures in the right thigh and also injured his left shoulder. He was admitted into MIOT Hospitals, which is a recognized private hospital. He was operated upon for severely comminuted super condylar

inter condylar fracture distal femur right. He underwent open reduction and internal fixation with 95 degree condylar plate and lag screws in the right femur. He was discharged on 22.03.2012. However, since there was swelling in the leg which had been operated upon and the leg was also infected, he was forced to get re-admitted on 03.04.2012. It was advised that the implant should be removed. So MIOT Hospital removed the implant because of the infection. The doctors at MIOT advised that a knee orthodesis as further treatment. The proposed procedure suggested by the MIOT doctors would result in the applicant losing mobility of his knee cap and he would not be able to bend his knee after the proposed procedure. The applicant continued to be in severe pain despite the removal of the implant. He was immobilized and the infection in the leg was still persisting. The applicant's family sought a second medical opinion from Dr. Raveendran of VHS who orally opined that such a treatment was not required and that the applicant's leg could be saved. The applicant's family decided to shift the applicant from MIOT to VHS, which is another recognized hospital. However, on 21.04.2012, when the applicant was discharged, the VHS staff were on a strike and hence he could not be admitted. Since the applicant was in debilitating pain, the applicant was admitted at the nearest hospital, Starlight hospitals where he was treated. The applicant, upon discharge from Starlight hospitals, filed a claim for medical reimbursement which, as per rules is to be certified by the Medical Officer as an 'emergent situation' for the sanction of the reimbursement. The Medical Officer certified the claim of the

applicant on 23.08.2012 and on the basis of such certification, the claim of the applicant was approved by the Section Officer. The Controller of Administration, for reasons best known to him, sent back the sanction for re-examination twice on the ground that the applicant did not satisfy the conditions for 'emergent situation' as the applicant had voluntarily discharged himself from MIOT and had gotten admitted in Starlight, an unrecognized hospital, without recording the reason stated by the applicant for the admission in Starlight – ie the dis-satisfactory care received at MIOT forcing the applicant to shift to VHS and his inability to get admitted in VHS because of the strike and being forced to be admitted in the nearest hospital as he was in debilitating pain. The Controller of Administration returned it twice despite the certification by the concerned Medical Officer and the Section Officer approving the claim twice. On the basis of this opinion of the Controller of Administration, the Director requested the Director-General to provide approval for the sanction of the claim. The Director-General rejected the claim on the grounds that the rules did not provide for such a situation. The applicant sent a representation asking for reconsideration which was also rejected by the Director-General. The applicant, with no other recourse, filed a grievance complaint with the Local Grievance Committee which ultimately advised him to apply to the Benevolent Fund of CSIR. The Controller Of Administration, for reasons best known to him applied to the Welfare Fund on behalf of the applicant despite the recommendations of the Grievance Committee to apply to the Benevolent Fund. The applicant's

application to the Welfare Fund was rejected as the Welfare Fund was towards life saving expenses like heart surgeries, cancer treatment etc. The applicant then made a representation to the Benevolent Fund to consider his claim and allow reimbursement as he had to take a loan for those medical expenses and he was still paying off that loan which was a major financial burden on his family and him. The applicant also made an application to the Central Grievance Committee. The applicant made another representation to the Director which was forwarded to the Health Services Committee which also rejected his application on the grounds that he voluntarily discharged from MIOT Hospitals. Hence the applicant has filed this OA seeking the above reliefs, inter alia, on the following grounds:

- i. The denial of medical reimbursement to the applicant despite the certification by the Medical Officer as an 'emergent situation' is arbitrary and unjust.
- ii. The Certification of a situation as 'emergent' would require specialized and expert knowledge of medicine which the Controller of Administration do not posses. He therefore cannot disregard the certification given by an expert on the mere reason that they do not believe the decision to be correct.
- iii. The rules provide that the final authority for permitting reimbursement lies with the Director of the Institute. The applicant's case has been repeatedly allowed by the Director but the Accounts department has not been accepting this decision when they do not have the authority to reject the same.
- iv. The applicant has suffered tremendous financial problems because

of the loans he had to take to finance his treatment and continuing interest payments on the same.

v. In the alternative, without prejudice to the above, the applicant's case would fall squarely within the objectives of the Benevolent Fund.

3. The respondents have filed reply. It is submitted that the applicant S. Raghupathy is employed as Lab Assistant at CLRI, Adyar and was admitted to MIOT Hospital at Chennai a recognized hospital for CLRI staff under CGHS after he met with the road accident on 12.03.2012 and he was discharged from the hospital on 22.03.2012. The applicant was readmitted in MIOT Hospital on 03.04.2012 and later on he got himself discharged on his own volition ie., “discharge at request” from MIOT Hospital on 21.04.2012 and thereafter got admitted at Starlight Hospital, Chennai (which is not a recognized hospital for CLRI staff) on the ground that the treatment given at MIOT Hospital was not satisfactory. The medical expenditure incurred by the applicant at MIOT Hospital for the period from 12.03.2012 to 22.03.2012 for Rs.40,097/-, from 29.03.2012 to 03.04.2012 for Rs.2061 and from 29.03.2012 to 21.04.2012 for Rs.60,443/- was reimbursed by the department on a claim made for Rs.72,547/-. The respondents would further submit that on 14.06.2012, the applicant submitted bill from Starlight Hospital totalling to Rs.2,44,080/- for reimbursement in connection with the medical treatment taken by him from 21.04.2012 to 15.05.2012. The Medical Officer, CLRI recorded on 03.07.2012 that as per the record submitted the indication of emergency admission and

treatment in the hospital was not been given. Thereafter the applicant submitted a certificate dated 15.05.2012 (produced after 05.07.2012) to the effect that he was admitted on 21.04.2012 on emergency basis. Based on the said certificate Medical Officer, CLRI vide Note dated 23.08.2012 had certified it as emergency. But on further examination of claim, for treatment at Starlight hospitals, by the administration of the respondents, it was found that the applicant's case does not merit consideration as it was not fulfilling the criteria of medical reimbursement on emergent conditions. Further the applicant has requested the Director, CLRI to ratify his admission in Starlight Hospital and admit his claim. However, on proper examination of the case by the department it was indicated that the case does not merit/fulfil the criteria for consideration for the purpose of reimbursement by relaxation of rule under emergent condition. The Central Service (Medical Attendance) – XVII Rules clearly state that in an emergent case involving accident, serious nature of disease etc, the person or persons on the spot may use discretion for taking the patient for treatment in a private hospital in a case where no Government or recognized hospital is available near than the private hospital. However, in the case of the applicant who had been taking treatment in a recognized hospital got himself discharged from MIOT hospital on his own volition without informing the department, got himself admitted in Starlight Hospital which is not a recognized hospital. Therefore, the question of emergent condition does not arise in his case, as he has already been admitted in the recognized hospital and it was also

not a case where the patient is referred to some other hospital on medical conditions / emergency by the hospital. Even the discharge summary of the Starlight hospital clearly indicate that there was no emergency situation existed at the time of applicant's admission and the certificate issued by the Starlight Hospital at a later stage is inconsistent with the discharge summary issued. Furthermore, many recognized hospitals apart from MIOT Hospital, Chennai are available within a radius of 8 kms and therefore, the claim of the applicant could not be considered as per the rules. The Director, CLRI as a goodwill gesture had referred to the DG, CSIR for considering the applicant's case as a special case for reimbursement to the extent of CGHS Rates amounting to Rs. 1,95,136/-. However, the CSIR had regretted the said request as it was not in conformity with the Rules and the same was communicated to the applicant.

4. The applicant's further representation to the Local Grievance Committee for consideration of his case through CSIR Welfare Fund as per CSIR Letter No. 5-1(72)/2009-PD/HR-III dated 10.03.2014 was examined, but however his claim for financial assistance could not be acceded to since the treatment was taken in a private hospital. Applicant had made a representation vide letter dated 21.07.2015 and the representation was reviewed by the Health Service Committee, CLRI, Chennai which met on 31.07.2015 and rejected the same stating that it did not merit consideration. Hence the respondents pray for dismissal of the OA.

5. The applicant has also filed rejoinder to the reply statement of the

respondents more or less reiterating the averments made in the OA.

6. Heard counsel for both the parties and perused the pleadings and material on record.

7. Facts not being in dispute, the same obviate debates. On a road accident on 12.03.2012 the applicant suffered multiple fractures and was admitted into MIOT hospitals, got discharged once, readmitted and again discharged to be got admitted at VHS but in view of the strike there, he had to move to a private hospital in view of the emergent situation. The medical expenditure incurred at MIOT had been reimbursed to the admissible extent. It is only the expenses incurred in the Starlite hospital, a private hospital not one authorized by the Government for reimbursement purposes.

8. The question is also whether reimbursement of medical expenses incurred in a private hospital is reimbursable and so the conditions therefor. Contention of the respondents is that the individual had moved on his own volition from MIOT a recognized hospital to Starlite, a private hospital and there is no emergent circumstance to shift to a private hospital. This contention deserves to be rejected since, the authority competent to decide whether emergent situation exists or not is of the medical authority and not the administrative authorities. It is trite that every government official has basic knowledge of the extent of medical reimbursement and in case he takes treatment from private institution, he also knows that he is undertaking the risk of not getting reimbursed the amount paid to the hospital either full or in part. His moving to a private

hospital is more out of the need due to the seriousness.

9. In a catena of decisions the Hon'ble Supreme Court as well as Hon'ble High Courts and the coordinate Benches of this Tribunal, passed several orders directing the respondents to reimburse the payment of the private hospital where the patient was admitted in real emergency. The Honble High Court of Punjab and Haryana in the case of Union of India and others vs. Avtar Singh and another (supra) in para 7 & 8 has held as under: -

7. The right of a citizen to get medical care is a part and parcel of the right to live under Article 21 of the Constitution of India. Such right is further re-enforced under Article 47 of the Constitution. It is an equally sacred obligation cast upon the State....".

"8. The present writ petition is a mere reflection of the mechanical manner and utter insensitivity with which a claim for medical re-imbursement of an employee has been dealt with at the hands of a welfare State. We are unable to refrain ourselves from observing that the present writ petition is wholly frivolous.

10. The Honble High Court of Punjab and Haryana while delivering the judgment in the case of Union of India and others vs. Avtar Singh and another (supra) has relied upon the observations of the Honble Supreme Court made in the case of Surjit Singh vs. State of Punjab and others, 1996 (2) SCT 234 : [1996 (1) SLR 786 (SC)]. In the case before the Honble High Court of Punjab and Haryana, the patient was earlier treated in a Government hospital and then PGI and subsequently in a private hospital. In the present case also, the patient has been treated first in a Government hospital and subsequently in a private hospital. The Hon'ble High Court upheld the decision of the Central

Administrative Tribunal, Chandigarh Bench allowing reimbursement of medical expenses incurred for treatment of his wife in a private hospital and dismissed the Writ Petition with costs filed by the Union of India & Ors. The facts and circumstances of the case of Union of India and others vs. Avtar Singh and another (supra) is similar to the facts and circumstances of the present case. Hence, the ratio decided by the Honble High Court of Punjab and Haryana is squarely applicable to the facts of the present case.

11. In the present case, it is not in dispute that the applicant was admitted in the MIOT Hospital due to the accident and multiple fractures suffered by him. He had undergone open reduction and internal fixation with 95 degree condylar blade plate and leg screws right femur and was discharged on 22.03.2012. Due to acute pain, he was again admitted in MIOT Hospital. According to the applicant, due to poor treatment in the MIOT Hospital, his family members got him discharged from MIOT Hospital and tried to admit him in VHS Hospital. But since there was a strike in the VHS Hospital, he was admitted in Starlight Hospital, Chennai on the night of 21.04.2012 and blood transfusion was done. He was diagnosed with implant instability and re-operation by "Open Reduction Plate Osteosynthesis with BMAC was performed. The Medical Officer of CLRI has certified that the treatment underwent by the applicant at Starlight Hospital was under emergent circumstances.

12. The circular of CSIR dated 21.05.1996 deals with reimbursement of medical claims in respect of treatment obtained in private medical institutions on emergency situations. The relevant portion para 2.1 of the said Circular is reproduced here in below:-

The Heads of National Labs/Institutes may allow reimbursement of medical claims in respect of the treatment obtained under emergency in private medical institution without making any distinction between a private nursing home/clinic, subject to item wise ceiling as per the rates prescribed in the Annexure to the O.M referred to above without any financial limit on the total amount to be reimbursed. “

13. The Circular further provides that once emergency is established beyond doubt the case should be further processed for calculating the amount/money to be sanctioned and that in case where the treatment is taken in a non-recognised private hospital under such circumstances, the reimbursement should be made at the CGHS rates of that city. The applicant in the instant case had undergone re-operation by “Open Reduction Plate Osteosynthesis with BMAC” at the private hospital. The Rules only require that the treatment be certified as an emergency which was done in the present case by the Medical Officer and the Director has accepted the same.

14. In the conspectus of the above facts and circumstances of the case, ratio in the Judgements of the Hon'ble Apex Court and the High Court (supra) and the Circular on the subject, the impugned order dated 17.12.2012 of the 1st Respondent r/w OM dated 04.04.2013 issued by the 2nd Respondent r/w the

order dated 05.09.2013 issued by the 1st Respondent r/w Minutes of the Health Services Committing meeting held on 31.07.2015 are hereby set aside and quashed. The respondents are directed to process the claim of the applicant restricting his claim for reimbursement at the CGHS rates and settle his claim within a period of three months from the date of receipt of a copy of this order.

15. The OA is allowed on the above terms with no order as to costs.

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(T.Jacob)
Member(A)
.12.2019