
(2008) 02 DEL CK 0178
In the Delhi High Court
Case No : WP (C) No. 10704 of 2004

Dr. B.M. Gulati

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-02-2008

Acts Referred:

Citation : (2008) 149 DLT 556 : (2008) 117 FLR 1162

Hon'ble Judges : Veena Birbal, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Sudhir Nandrajog, for the Appellant; Jyoti Singh and Ankur Chhibbar, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Sarin, J.—Petitioner, Dr B.M. Gulati through this writ petition assails the order dated 8th May, 2003 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 1943/2001. The Tribunal, while dismissing the said application held that the petitioner is not entitled to payment for the costs incurred at Escorts Heart Institute and Research Centre (hereinafter referred to as EHIRC) as the same is not an authorized or a referral hospital. The Tribunal also held that petitioner being an ESIC retiree, was not eligible for treatment at EHIRC. Further, the petitioner's wife had not taken the treatment in an emergency condition from EHIRC. Relief was denied holding that in any case, the department had reimbursed the petitioner at prevailing rates admissible at AIIMS.

2. Petitioner, aggrieved by the said order, seeks quashing and setting aside of the order dated 8.5.2003. Out of the total amount of Rs. 3,52,338/- (Three lac fifty two thousand three hundred thirty eight only) expended by the petitioner on treatment of his wife, a sum of Rs. 77,000/- (Seventy seven thousand only) was reimbursed to him by ESIC. He, Therefore claims balance of Rs. 2,75,338/- (Two lac seventy five thousand three hundred thirty eight only). Interest is also claimed for belated payment.

3. Before noticing the grounds raised in the present petition, brief facts leading to the filing of writ petition may be noted.

(i) Petitioner retired from the service as Director (Medical) ESIC, New Delhi in 1988. In the midnight intervening 4.8.1997 and 5.8.1997, petitioner's wife Smt. Bimla Gulati suffered a severe heart attack and was rushed to ESIC Hospital, Basai Darapur. She was admitted in the ICCU. On 17.8.1997, doctors of the ESIC Hospital advised her to be shifted to Apollo Hospital for Angiography and further treatment. At that point of time no dates were available for about two weeks in AIIMS or G.B. Pant Hospital for angiography.

(ii) At Apollo Hospital, Angiography was performed on 23.8.1997 after her admission to ICCU. The main arteries were found blocked. She was advised Bypass surgery. The surgery could not take place due to a low grade fever. She was discharged on 5.9.1997 for recouping and improvement, to enable surgery.

(iii) However her condition deteriorated. She was rushed to EHIRC on 5.11.1997. Upon examination there, she was recommended emergent Bypass surgery in view of blockade and imminence of a cardiac attack. Considering her past history of chronic infection and hypertension, she was recommended "Port Hole" surgery. "Port hole" surgery was performed successfully on 11.11.1997, followed by Angioplasty on 21.11.1997. Petitioner's wife was discharged on 28.11.1997.

(iv) Petitioner paid/deposited bills to the tune of Rs. 3,52,338/- (Three lac fifty two thousand three hundred thirty eight only) with the respondent No. 2 for reimbursement against which, a sum of Rs. 77,000/- had been paid. Balance amount of Rs. 2,75,338/- (Two lac seventy five thousand three hundred thirty eight only) was not paid despite representations made by the petitioner.

(v) On 9.5.2001, Petitioner moved a writ petition being WP(C)No. 3779/2002 which was withdrawn to approach the tribunal. In May, 2001, petitioner moved an OA No. 1943/2001 before the Central Administrative Tribunal. The said application was dismissed. Hence, present petition.

4. Respondents in opposing the OA before the Tribunal, have taken a preliminary objection that the petitioner was only a retired employee of ESIC. He was entitled to avail of only such medical facilities as were available at ESIC dispensary/ESI hospitals or the hospitals recognized under the ESIC Schemes namely, AIIMS and G.B. Pant Hospital etc. EHIRC and Apollo were not recognized/referral hospitals. The respondents, however, had taken a lenient view in the matter and reimbursed Rs. 77,000/- which the appellant would have spent had he been treated at AIIMS.

5. Learned Counsel for the petitioner Mr. Sudhir Nandrajog submitted that although there was sufficient material on record to demonstrate that availing of treatment at Apollo hospital was following the cardiac attack and due to non-availability of dates for angiography at AIIMS and G.B. Pant hospitals. Further, as a result of infection and low grade fever, surgery could not take place at Apollo

Hospital and she was discharged. The admission to EHIRC was in emergent condition and based on her parameters, cardiac attack was imminent. It was not a case of elective surgery. Based on the patient's history with regard to medical problems of hypertension and low grade fever and chronic infection in her case, the doctors had recommended "Port Hole" surgery. He submits that though, as per number of judicial pronouncements namely J.C. Sindhwani v. Union of India and Anr. 2005 (85) DRJ 157 , V.K. Jagdhari Vs. Union of India (UOI) and Others, , S.K. Sharma and Others Vs. Union of India (UOI) and Others, T.S. Oberoi v. Union of India and Anr. 2002 (II) DLCR Delhi 266, petitioners were entitled to actual reimbursement of the medical expenses incurred in similar circumstances. In the present case, Petitioner confines his claim to the reimbursement of amounts as per the petitioner's entitlement for the services at rates payable at AIIMS.

In view of the foregoing, the controversy appears to have been considerably narrowed. We are only required to consider the entitlement of the petitioner to reimbursement on the basis of treatment and services received at the rates as applicable at AIIMS.

6. Ms. Jyoti Singh, learned Counsel for the respondent in this regard submitted that the petitioner was making only a monthly contribution of Rs. 20/- on account of his pension being Rs. 2,000/-. Hence, the petitioner would not be eligible for treatment and reimbursement of the charges incurred for a private ward at AIIMS. She refers to Government of India, Ministry of Health and Family Welfare's circular bearing No. S-11011/16/94 CGHS Desk-II GNoid/CGHS(P) to urge that for indoor treatment, entitlement to those drawing pension up to Rs. 2,500/- per month was for a General Ward. She submits that hence, the entitlement of the petitioner was only for General Ward. The above argument completely ignores that the rates of pension and scales of salary have been revised from time to time. The argument of the respondents that based on the pension and the contribution per month, the eligibility for the Private or General Ward be determined overlooks the fact that there have been revisions in the pension and the pay scales.

7. The contribution which was Rs. 20/-, was revised in the year 1999 to Rs. 40/- per month. The respondents had also introduced a "One Time Contribution" scheme. It is not the case of the respondents that at any point of time, the respondent notified the petitioner either by way of a circular or otherwise that a higher amount of either monthly contribution or a "One Time Contribution" was required by them for continuance of his eligibility under the scheme. Besides, the petitioner who was earlier drawing a pension of Rs. 2,481/-, the basic pension itself apart from other allowances, stood revised as on 1.1.1996 to Rs. 7,254/- per month. We may note that as per the Government of India's circular bearing Office Memorandum No. S-11011/16/94 CGHS Desk-II GNoid/CGHS(P) that those drawing a salary of more than Rs. 6,000/-, were entitled to private ward-I while the petitioner, leave aside the salary, was drawing a pension of Rs. 7,254/-.

The comparable corresponding salary scale would be much higher. Thus, it is idle for the respondents to contend that the petitioner was not eligible for himself or his dependent members for the facility of a Private Ward. The argument of the respondents that based on the pension and contribution per month, the eligibility was for General Ward overlooks the revision in the pension and pay scales. In our view, Therefore, the respondents have denied to the petitioner the Private Ward charges and treatment rates as applicable Therefore at AIIMS for various services rendered.

8. We, Therefore, hold that the petitioner was eligible to be reimbursed the Private Ward charges and the corresponding charges applicable for medical and other services rendered at the EHIRC hospital on the basis of charges for services and treatment at AIIMS rates for admission in Private Ward. In case there are no charges available in the AIIMS for "Port Hole" surgery, then the maximum amount that is payable for a full-fledged by-pass surgery with stay in Private Ward and for services rendered therein, be paid to the petitioner. The respondents shall give effect to the above within one month from today.

Petition stands allowed in the above terms.