(2014) 07 DEL CK 0118

In the Delhi High Court

Case No : W.P. (C) 1881/2014

Govt. of NCT of Delhi — APPELLANT

Vs

Vikramaditya — RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Citation : (2014) 07 DEL CK 0118

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Sushil Dutt Salwan, Advocate for the Appellant; D.R. Gupta, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The Government of National Capital Territory of Delhi (GNCTD) challenges the order of Central Administrative Tribunal (CAT/Tribunal) dated 31.01.2013 in O.A. No. 2148/2012, whereby reimbursement of the treatment cost in respect of the Chemotherapy procedure undergone by the respondent/applicant as per the approved rates, was directed.

2. The brief facts are that the respondent/applicant is a retired Principal. He had apparently undergone some emergent surgery on account of intestinal blockage in Thane during a visit there, sometime in 2009. Acting upon a certificate issued by the hospital which treated him and diagnosed Cancer, he approached Dharamshila Cancer Hospital & Research Centre and after admission in the said institution underwent Chemotherapy. He claimed reimbursement of the cost of the treatment. The applicant relied upon an emergency certificate issued by Dharamshila Cancer Hospital & Research Centre as well as the case summary provided at the time of his discharge. The petitioner/GNCTD turned down his request for reimbursement stating that in terms of clause 10(C)(iii) of the Delhi Government Employees Health Scheme (DGEHS) office memorandum dated 25.10.2007, treatment in unrecognised/non-empanelled hospital was impermissible. The relevant clause stipulating the same is extracted below:

(iii) Treatment in private hospitals not recognized/not empanelled under the scheme in medically emergency conditions will also be admissible when treatment is necessitated in such hospitals being situated near the place of illness/trauma and when no other recognized facility is available nearby or due to circumstances beyond the control of the beneficiary.

3. The Tribunal noticed in its impugned order that four hospitals, i.e. Indraprastha Apollo Hospital, Batra Hospital, Dharamshila Cancer Hospital and Rajiv Gandhi Cancer & Research Institute, Rohini were empanelled or recognised. Relying upon its decision in Indra Pal Vs. CMD, BSN and Others (O.A. No. 3370/2011 decided on 20.12.2011) and the further ruling in Mahinder Kumar Vs. MTNL & Others (O.A. No. 1545/2011 decided on 27.04.2012), the CAT allowed the application and directed reimbursement at approved rates.

4. Mr. Salwan, learned counsel for the GNCTD argues that the Tribunal overlooked a salient aspect, i.e. the violation of prescribed procedure which was highlighted in terms of the rules applicable to GNCTD employees/former employees of GNCTD. It was submitted in this regard that in non-emergent situations, Authorised Medical Attendant (AMA) would have to permit the beneficiary to avail the treatment in a hospital, or obtain treatment from diagnostic centres which are not empanelled. In the present case, all the circumstances pointed to respondent/applicant being aware of his condition and consciously approaching a non-empanelled institution.

5. Learned counsel for the respondent/applicant urged that the cost of surgery undergone in this case in Thane itself was reimbursed. The petitioner was then advised to follow-up, due to which the patient approached Dharamshila Cancer Hospital & Research Centre, which concededly was an empanelled institution. It was argued that even though GNCTD submits that in 2009, the hospital was for sometime not empanelled, it has again been empanelled.

6. It was submitted that there is no dispute about the treatment undergone by the respondent/applicant and, therefore, the CAT''s order is justified.

7. The relevant part of the governing guidelines reads as follows:

10. Mode of Medical Treatment:-

i. The attached dispensary/hospital shall be the single window for taking care of health requirements of the beneficiary (primary health care, referrals, supply of medicines, etc.). The AMA at the attached dispensary/hospital will be competent to accord permission/authorization for treatment/tests in DGEHS recognized private hospitals/diagnostic centres. There will not be any need of permission of the concerned department from which the beneficiary retired.

ii. The authorised medical attendant (AMA) for referral purposes will be the CMO/ MO Incharge of the dispensary/hospital where the beneficiary is attached.

iii. The beneficiary will have the option of availing facility of treatment/diagnostic

procedures etc. in recognized institution of his/her choice.

iv. Treatment anywhere outside Delhi will be considered for reimbursement in case of emergency only as per provisions of CSMA rules.

v. Cashless treatment facility in emergent conditions will be available to all pensioner beneficiaries in recognized empanelled private hospitals/ diagnostic centers in Delhi on production of valid DGEHS Card, Cashless treatment facility in non-emergent conditions for OPD treatment, Indoor treatment and for investigations as per entitlement will be available to all pensioner beneficiaries in recognized empanelled private hospitals/diagnostic center in Delhi with the authorization of AMA. These hospitals will be sending the bills to concerned departments (from where the DGEHS Card has been issued) for making payments which have to be made within 60 days as per terms and conditions of the agreement entered into with these hospitals/diagnostic centers. The itemized bills will have to be accompanied by the following documents

8. This Court notices that the clause 10 of the aforesaid guidelines goes on to provide as follows in respect of emergent conditions:

C. Treatment in emergent conditions:

i. In emergent condition beneficiary can go to any of the recognized institution of his/her choice directly without being formally referred by AMA. Cashless treatment facility in emergent conditions will be available to all pensioner beneficiaries in recognized empanelled private hospitals/ diagnostic center in Delhi on production of valid DGEHS Card.

ii. Follow-up treatment subsequent to any emergent treatment/procedure or for the illness shall be on authorization of concerned AMA.

iii. Treatment in private hospitals not recognized/not empanelled under the scheme in medically emergent conditions will also be admissible when treatment is necessitated in such hospitals being situated near the place of illness/trauma and when no other recognized facility is available nearby or due to circumstances beyond the control of the beneficiary.

iv. However, reimbursement in such cases shall be made within the ceiling of DGEHS rates and there shall also be a provision for medical advance by the concerned departments (head of the department) of 90% of the estimated expenditure in such conditions.

9. It is evident from the above that the beneficiaries/retired and serving GNCTD employees can avail the treatment in private recognised hospitals including during emergent situations provided certain conditions are met with. Clause 10(C)(i) states that if the beneficiary approaches a recognised institution, cashless treatment facilities would be available and that there is no requirement of being referred by the AMA. The same conditions prevail in respect of the follow-up treatment. Likewise, in the case of emergent situations, it is open to

the beneficiaries to approach even the non- empanelled institutions but the only rider is that the reimbursement in case of non-recognised or non-empanelled institutions, would be within the ceiling of DGEHS rates.

10. The facts of the present case reveal that the respondent/applicant underwent surgery for intestinal blockage in Thane in 2009. At that stage, he was advised to approach a hospital for further follow-up treatment since cancer was detected. There could possibly have been some dispute, or confusion because at some point in time Dharamshila Cancer Hospital & Research Centre was an empanelled institution. The GNCTD asserts that in 2009, it ceased to be a part of the panel. However, no such notification or material was placed on record or produced to the notice of this Court.

11. The applicant/respondent asserts that Dharamshila Cancer Hospital & Research Centre is now a recognised institution. As to what precisely instigated the respondent to approach a private hospital and that too, a non-empanelled one without seeking reference, or clearance of AMA, is unclear. It is asserted that even on date he has to undergo chemotherapy.

12. In these circumstances, the Court is of the opinion that whilst initially there appears to have been no justification for respondent/applicant to straightway approach a non-empanelled institution during chemotherapy treatment as an emergent condition, equities are such that the order of the Tribunal does not require interference. We instead direct that the applicant/respondent should present his medical documents and line of treatment to the concerned AMA in respect of the procedure being undergone by him currently and as well as for the future.

13. The writ petition is disposed of in the above terms.

