

(2023) 05 DEL CK 0345

In the Delhi High Court

Case No : Civil Writ Petition No. 2641 Of 2023

GP Capt Suresh Khanna (Retd)

APPELLANT

Vs

UOI And Anr

RESPONDENT

Date of Decision : 22-05-2023

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2023) 05 DEL CK 0345

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Anil Sharma, Arpit Sharma, Aman Sharma, Raj Kumar, Tarveen Singh Nanda

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.
2. The Petitioner is a retired officer of the Indian Air Force who has a valid health cover issued by the Ministry of Defence bearing ECHS No. DLI000002796125. It is the case of the Petitioner that he is entitled to comprehensive Medicare under the Ex-Servicemen Contributory Health Scheme (ECHS). He seeks reimbursement for his medical expenses during the period when he was diagnosed with Covid-19 Pneumonia and needed treatment for eight days, from 28th April, 2021 to 5th May, 2021, in the Covid Isolation Ward at the C.K. Birla Hospital, Gurugram. The case of the Petitioner is that he had to pay the total amount incurred of Rs. 3,55,286/- for treatment at the Covid-19 isolation ward. However, the reimbursement which has been given to him is for only Rs.1,83,748/-. He prays for a direction to be issued to the Respondents to reimburse the remaining amount i.e., Rs. 1,71,528/- to him.
3. Notice was issued in this matter, and an affidavit was to be filed. No affidavit has been filed. However, Id. Counsel for the Petitioner has pointed out that the

only reason why the remaining amount is not being reimbursed is that the Ex-Servicemen Contributory Health Scheme (ECHS) cannot be directed to pay extra amount to the beneficiary besides the government-approved rates.

4. It is not in dispute that the Petitioner was admitted to the C.K. Birla Hospital in Gurgaon. The Respondent's case is that the hospital has overcharged beyond government approved rates. This issue is already covered by orders passed by this Court in various cases, including in *Dinesh Kumar v. Government of National Capital Territory of Delhi & Ors.*, 2022/DHC/005039 and order dated 18th April, 2023 in W.P.(C) 4882/2023 titled *Nupur Gupta v. Govt. of NCT of Delhi & Ors.* In *Dinesh Kumar (Supra)*, a Id. Single Judge of this Court held that in such cases, reimbursement has to be given to the beneficiaries and that it was incumbent upon the concerned government or authority to obtain recovery from the hospital. The relevant extracts of the said order are extracted as under:

"7. The Petitioner, who had to spend his hard-earned savings, while undergoing treatment to save his life, cannot be simply told that, since respondent no.5 has failed to abide by the circular dated 20.06.2020 issued by the GNCTD, he should seek refund from the said hospital which saved his life. This Court does not deem it appropriate or necessary to delve into the validity of the circular dated 20.06.2020, in the present petition, where an officer of Delhi Higher Judicial Service is seeking simpliciter reimbursement of the amount for the bona fide expenses incurred by him for treatment at the respondent no.5 hospital for Covid-19, when the city was engulfed with the second wave of the pandemic. I am, therefore, unable to accept Mrs. Ahlawat's plea that the respondent no.5 should be directed to explain its stand in the present writ petition regarding its action of charging amounts higher than the ones prescribed in the circular dated 20.06.2020, or should be directed to refund the amount of Rs. 16,93,880/-.

8. In this regard, reference may be made to the decision of this Court in *Sqn. Commander Randeep Kumar Rana (supra)*, wherein the Division Bench while dealing with a case, where the hospital had charged over and above package rates, held that the employer was under an obligation to pay to the government employee, and could make appropriate recoveries in accordance with law, from the hospital which had overcharged him. The relevant extract reads as under:

"5. We have given our careful considerations to the arguments advanced by learned counsel for both the parties. It is not denied that the treatment taken at Escorts Hospital was pursuant to the recommendation made by the Safdarjung Hospital which is a Government hospital. Naturally, when a small child is to be treated for Ventricular Septal Defect involving open heart surgery, a specialised hospital and its services are required. Therefore, once the respondent themselves have recommended the treatment to be taken by the Escorts Hospital, they cannot deny the full reimbursement on the basis that the charges incurred by the Petitioner over and above the package rate which the respondent has agreed with the said hospital cannot be reimbursed. At page 12 of the paper-book there is a letter conveying permission by the respondent to the Petitioner to

undertake specialised treatment from recognised private diagnostic centre. There is another letter of the respondent at pages 22-23 of the paperbook in which it has been admitted that Escorts Heart Institute and Research Centre was also one of the hospitals which the Petitioner was entitled for treatment. Now we come to the plea which has been taken by the respondent in the counter affidavit. It has been contended in para 11 of the counter affidavit that it is the duty of the citizens to see and ensure that such recognised hospital do not charge excess of the package rates. How a citizen can ensure that a hospital does not charge over and above the package rate? The power to lay down guidelines is with the respondent. A citizen is a mere spectator to what State authority do and decide. If the hospital has charged over and above the package rate, the respondent is under an obligation to pay to such charges as the Petitioner has incurred over package rates at the first instance and if in law state can recover from the hospital concerned, they may do so but they cannot deny their liability to pay to the Government employee who is entitled for medical reimbursement.”

“9. In the light of the aforesaid, I have no hesitation in holding that the respondent nos. 1 to 3 ought to forthwith reimburse the Petitioner by paying him the differential amount of Rs.16,93,880/-, and if permissible, recover the same from the respondent no.5. It is however made clear that this Court has not expressed any opinion on the validity of the circular dated 20.06.2020 and therefore, it will be open for the respondent nos. 1 to 3 to pursue its remedy as per law, against respondent no.5, including taking penal action, and recovery of any amount which it perceives has been charged in excess.

10. The writ petition is, accordingly, allowed by directing the respondent nos. 1 to 3 to pay within four weeks the balance amount of Rs. 16,93,880/- as noted in the communication dated 02.05.2022 (Annexure P13) issued by the respondent no.3 to the Petitioner.”

5. In *Shiva Kant Jha v. Union of India*, (2018) 16 SCC 187, while considering reimbursement of medical expenses of a CGHS beneficiary, the Supreme Court has emphasised that the real test for ascertaining the claim for reimbursement must be the factum of treatment. It was also clarified that once the factum of treatment is verified, the claim cannot be refused on technical grounds. The relevant extract of the said judgement reads as under:

“17. It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by

itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the Petitioner forcing him to approach this Court."

6. Recently, the Division Bench of this Court, vide judgement dated 10th May, 2023 in Union of India & Anr. v. Shri. Joginder Singh, 2023:DHC:3138-DB, relying on Shiva Kant Jha (supra), has also re-emphasised the test of factum of treatment, in the context of reimbursement of treatment taken in non-empanelled hospitals. The Division Bench has also highlighted that there is a positive obligation on the State/Health Scheme to ensure timely medical treatment and that the refusal of claims by the authorities adds to the misery of the beneficiaries. The relevant extract of the said judgement of the Division Bench is extracted as under:

"12. The medical claim for treatment undertaken in emergency should not be denied for reimbursement merely because the hospital is not empanelled. The test remains whether the claimant had actually undertaken the treatment in emergent condition as advised and if the same is supported by record. Preservation of human life is of paramount importance. The State is under an obligation to ensure timely medical treatment to a person in need of such treatment and a negation of the same would be a violation of Article 21 of the Constitution of India. Administrative action should be just on test of fair play and reasonableness. Accordingly, keeping into consideration the constitutional values, the executive instructions need to be applied than rejecting the claim on technical ground of undertaking treatment in a nonempanelled hospital, since the CGHS/State is responsible to ensure proper medical treatment in an emergent condition and further cannot escape the liability, if the treatment undertaken is genuine. Any denial of claim by the authorities in such cases only adds to the misery of the Government servant by further forcing him to resort to Court of law."

7. In the present case, there is no dispute of the factum of treatment availed of by the Petitioner. No counter affidavit has been filed. The only reason appears to be over-charging by the hospital beyond Government approved rates. The patient cannot be blamed for the same. It is up to the authorities to take suitable action or seek refund from the hospital. Once the treatment is availed of and the amount is not in question, the Petitioner is entitled for reimbursement. Accordingly, in view of the settled legal position, the following directions are

issued:

i) The Respondent shall pay to the Petitioner the differential amount of Rs.1,71,528/- by 1st July 2023.

ii) If the same is delayed, interest at the rate of 6% would be liable to be paid on the outstanding amount from the date when the first application for reimbursement was made. If the same is paid within the stipulated time, no interest would be liable to be paid.

iii) The Respondent is, however, free to take action against the C.K. Birla hospital, Gurugram, hospital in respect of overcharge, if any, including seeking refunds/payment of the overcharged amount.

8. The petition is disposed of in these terms. All pending applications, if any, are also disposed of.