
(2019) 05 CAT CK 0058

In the Central Administrative Tribunal

Case No : Original Application No. 3205 Of 2018

Hira Lal Bhat

APPELLANT

Vs

Chairman and Managing Director

RESPONDENT

Date of Decision : 09-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 21, 41, 47

Citation : (2019) 05 CAT CK 0058

Hon'ble Judges : Mohd. Jamshed, J

Bench : Single Bench

Advocate : Rani Chhabra, H.K. Gangwani

Final Decision : Dismissed

Judgement

1. The applicant was working as Deputy General Manager (DGM) in Bharat Sanchar Nigam Limited (BSNL) and retired on 31.03.2014.

He was diagnosed with Liver Cirrhosis in July, 2013 and was under medical treatment. The applicant was admitted in Inderprastha Apollo Hospital on 19.03.2015 for liver ailment and discharged on 01.04.2015. The applicant was re-admitted on the same day i.e. 01.04.2015 in Inderprastha Apollo Hospital and advised Liver Transplant surgery. On 02.04.2015, the applicant was operated for Liver Transplant surgery and was discharged from the hospital on 21.04.2015. It is stated in the O.A. that the applicant submitted his medical reimbursement claim for indoor treatment in two parts to Chief General Manager, BSNL on 18.06.2015. For an amount of Rs.4,03,344/- for the period from 19.03.2015 to 01.04.2015 and for an amount of Rs. 21,00,000/- for Liver Transplant surgery for the period from 02.04.2015 to 21.04.2015 in accordance with Ministry of Health letter dated 16.01.2013 endorsed by BSNL letter dated 23.05.2013.

2. The applicant represented to the Chief General Manager, (Northern Telecom Region) (NTR), BSNL regarding reimbursement for his pending indoor treatment bill, as he had spent huge amount of Rs.25,00,000/- on the Liver Transplant

surgery and other indoor treatment. The applicant again made an application dated 16.05.2016 to General Manager (NTR) regarding the settlement of his medical reimbursement claim. The applicant further made representations dated 17.06.2016 and 19.09.2016 to the concerned authorities. The respondents vide letter No. 23-9/2014-MRS/1394(A)/25 dated 02.01.2017 sanctioned an amount of Rs.14 lacs for his indoor treatment against the bill submitted by him for Rs.25 lacs. As the respondents had not reimbursed the full amount claimed by him, the applicant once again wrote to the Chief General Manager on 11.04.2017 requesting for full settlement of his claim. The respondents vide their impugned order dated 8/13.11.2017 advised the applicant that his claim has been settled and paid. No further claim is admissible as per BSNL guidelines and CGHS rates. Aggrieved by the action of the respondents, the applicant has moved the present O.A. seeking the following relief:-

"(a) quash the order No. 23/9/2014-MRS/1394(A)/36 dated 08.11.2017 passed by the Respondents.

(b) direct the respondents to reimburse the medical claims given by the applicant with 18% interest."

3. The respondents in their counter reply submitted that the request for reimbursement of medical bills amounting to Rs. 25,03,344/- for indoor treatment taken in Indraprastha Apollo Hospital, New Delhi, which is a BSNL empanelled hospital but not empanelled for Liver Transplant, was received on 18.06.2015 from the applicant for the period from 19.03.2015 to 01.04.2015 and 01.04.2015 to 21.04.2015. These reimbursement bills were processed as per the laid down procedure and BSNL policy. It is stated that the same was also referred to AIIMS for technical advice on the matter of Liver Transplant surgery. These were also checked by NTR Medical Committee of BSNL on 26.02.2016. The Committee after examining the case recommended that medical reimbursement be approved as per CGHS rates. The BSNL vide its order dated 06.12.2016 considered the case of the applicant as an exceptional case and directed that reimbursement be made as per the CGHS rates. Vide Sanction Memo dated 02.01.2017, amounting to Rs. 14 lacs (Rs.11,50,000 for transplant and Rs.2,50,000/- for pre-transplant evaluation of donor and recipient) was approved by the competent authority. This amount has been paid to the applicant. It is also stated that malfunctioning of liver for the applicant had developed over a period of time and, therefore, the applicant should have taken this treatment in the prescribed hospital. BSNL employees are also governed by CGHS Scheme, which does not envisage full assistance in such cases to its beneficiaries.

4. The applicant in his rejoinder has reiterated the points made in the O.A. and also enclosed emergency certificate.

5. Heard the learned counsel for both the parties.

5.1 During the course of arguments, the learned counsel of the applicant relied upon the judgment of Hon'ble Supreme Court in the case of Shiva Kant Jha Vs.

Union of India [Writ Petition (Civil) No. 694/2015]. In this case, the petitioner had submitted bills for reimbursement, which were rejected by the concerned authorities on the ground that prior approval for such device implant was not sought and that CRT-D implant was not required. The petitioner was reimbursed partial amount out of the reimbursement claimed. There were rival contentions made in this case. The Hon'ble Supreme Court finally took the view that every government employee during his life time or after his retirement is entitled to get medical facilities. Relevant paras of the said judgment are quoted as under:-

"13.....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.

14) This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the central government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force. In the facts of the present case, it cannot be denied that the writ petitioner was admitted in the above said hospitals in emergency conditions. Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. The doctors did his operation and had implanted CRT-D device and have done so as one essential and timely. Though it is the claim of the respondent-State that the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS rates and that too after following a proper procedure given in the Circulars issued on time to time by the concerned Ministry, it also cannot be denied that the petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals.

15) In the present view of the matter, we are of the considered opinion that the CGHS is responsible for taking care of healthcare needs and well being of the central government employees and pensioners. In the facts and circumstances of the case, we are of opinion that the treatment of the petitioner in non-empanelled hospital was genuine because there was no option left with him at the relevant time. We, therefore, direct the respondent-State to pay the balance amount of Rs. 4,99,555/- to the writ petitioner. We also make it clear that the said decision is confined to this case only."

It is, however, evident that the facts of the above quoted Hon'ble Supreme Court

judgment are different from the facts of the case in the present O.A.

5.2 Learned counsel for the respondents argued that for this kind of ailment, which has been going on for some time, the applicant should have gone to the hospital prescribed for Liver Transplant by BSNL. However, he chose to go to the Indraprastha Apollo Hospital. Secondly, there was no emergency. At the same time, the rules prescribed for reimbursement are only for certain types of indoor treatment surgeries etc. as per CGHS guidelines and the rules also govern the rates on which the reimbursement can be made towards medical expenses to the employees. In support of their arguments, the learned counsel of the respondents have relied upon the judgment of Hon'ble Supreme Court in the case of State of Punjab and Ors. Vs. Ram Lubhaya Bagga and Ors., (1998)4 SCC 117. The relevant paras of the judgment are as under:-

"29. No State of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finance permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India.

30.xxx

31.xxx

32. Any State endeavor for giving best possible health facility has direct correlation with finances. Every State for discharging its obligation to provide some projects to its subject requires finances. Article 41 of the Constitution gives recognition to this aspect.

"41. Right to work, to educate and to public assistance in certain cases: The State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age sickness and disablement, and in other cases of undeserved want."

6. After hearing the arguments, it is observed that the applicant had been suffering from Liver Cirrhosis since July, 2013 as indicated in the O.A. and has been taking treatment for the same. He remained admitted in the hospital from 19.03.2015 to 01.04.2015. After his discharge on 01.04.2015, he was readmitted on the same day and had undergone Liver Transplant on 02.04.2015. His reimbursement claims for total amount of Rs.25 lacs, are for the period prior to his surgery for an amount of Rs.4,03,344/- for the period from 19.03.2015 to 01.04.2015 and for an amount of Rs. 21,00,000/- for surgery and post surgery from 02.04.2015 to 21.04.2015. These bills for reimbursement of the medical

expenses were submitted to the BSNL authorities. The BSNL authorities had initially took objections in terms of the treatment and the surgery having been done in a hospital, which is not empanelled in BSNL for Liver Transplant but decided to consider the applicant's case sympathetically. The Medical Committee examined the case of the applicant and after due deliberations approved reimbursement of an amount of Rs. 14 lacs (Rs.11,50,000 for transplant and Rs.2,50,000/- for pre-transplant evaluation of donor and recipient) to the applicant as per CGHS rates. The rulings of Hon'ble Supreme Court in the case of State of Punjab and Ors. (supra) hold that providing adequate medical facilities to the people is an essential part of the obligations under taken by the Government in the welfare State. No State of any country can have unlimited resources to spend on any of its projects. The same holds good for providing medical facilities to its citizen including its employees. It is also held that "Any State endeavour for giving best possible health facility has direct correlation with finances."

6.1 The applicant has not challenged if he has been denied any amount claimed for reimbursement, which was due to him in terms of the prescribed rules or is less than the prescribed CGHS rates.

6.2 The applicant in this OA has also sought directions to the respondents to reimburse the medical claim given by the applicant with 18% interest. In so far as payment of interest on delayed medical reimbursement is concerned, the Apex Court in the case of Om Prakash Gargi Vs. State of Punjab and Others SLP (C)No.19497 of 1996, decided on October 7, 1996 passed the following order :-

"4. We do not find any force in the contention. It is true that but for the benefit of reimbursement of the amount granted by the Government, the petitioner has no right to claim reimbursement. The question is whether on account of delay in reimbursing the amount incurred towards medical expenses, the State should be liable to pay also interest on the delayed payment? We are of the view that it is inexpedient and not proper to direct the State to pay interest for delay in payment of the reimbursement amount. It requires verification of the amounts spent by the petitioner and similar person. His right only is to get medical reimbursement, he should also be entitled to interest thereon. The order passed by the Court on an earlier occasion was to the effect of dismissing the special leave petition in limine. Therefore, it does not furnish any ratio decidendi for following the same. Under these circumstances, we do not think that it would be proper to direct payment of interest on the delayed reimbursement of the medical expenses incurred by a government servant. "

7. In view of the above mentioned, I find that the respondents have considered and reimbursed the due medical expenses incurred by the applicant in terms of the prescribed rules. As far as interest is concerned, in terms of the above quoted Apex Court ruling, interest on medical reimbursement for delayed payment cannot be allowed. The OA does not deserve any further consideration and the same is accordingly dismissed. There shall be no order as to costs.