
(2018) 09 CAT CK 0074

In the Central Administrative Tribunal

Case No : Contempt Application No. 3995 Of 2016

Jagat Singh

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 24-09-2018

Acts Referred:

Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 15
Constitution Of India, 1950 — Article 21, 47

Citation : (2018) 09 CAT CK 0074

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : Arati Mahajan Shedha

Final Decision : Dismissed

Judgement

1. When this matter was taken up for hearing today, applicant, who is present in person, requested for adjournment on the ground that his counsel is not available. On previous occasion also, i.e., 18.9.2019, the same request was made by him and last opportunity was granted to him to argue this case and this case was heard in-part. However, when this Court proceeds to adjudicate this case under Rule 15 of the CAT (Procedure) Rules, 1987, he states that he will argue this case in person. Accordingly, this Court heard the applicant in person and Ms. Arati Mahajan Shedha, learned counsel for respondent.

2. By filing the instant OA, the applicant seeks the following reliefs:-

"(i) quashing the impugned decision of the respondent and its expert committee as contained in letter dated 28.07.2016 (Annexure-A1) illegally denying the applicant full reimbursement of the actual expenses incurred on his treatment at Medanta Hospital.

(ii) declaring the action of the respondent in rejecting/declining the claim of the applicant for reimbursement of the actual expenses incurred at the Medanta Hospital as illegal, arbitrary, unconstitutional and unjustified and further

declaring the applicant entitled to reimbursement of actual expenses (amounting to Rs.2,50,000/-) incurred by him over his treatment in the Medanta Hospital, along with interest.

(iii) In the alternative declaring the action of the respondent in not reimbursing the applicant the expenses incurred over his treatment at the Medanta Hospital at CGHS rates as illegal and unjustified and directing the respondents to reimburse the medical expenses of the applicant for the said Hospital at the CGHS rates and to pay the difference of medical claim amounting to Rs.116406/- or any other amount as may arrived at the CGHS rates accordingly.

I. Any other, order or direction or such further orders or directions as this Hon"ble court deem fit and proper in the facts and circumstances of the case."

3. Brief facts of the case, as stated by the applicant in the OA, are that the applicant, who is serving as Tyreman in the respondent department, on 27.4.2015 suffered retrosternal chest pain radiation to left arm with sweating and giggliness and he was taken to Kalayani Hospital Private Limited, Mehrauli Road, Gurgaon, Haryana, which is in the penal of the respondent department. However, after keeping the applicant for few hours and giving treatment to him, the said hospital referred the applicant to a higher centre for further management as, according to the applicant, they were neither well equipped nor were able to deal with the situation of the applicant.

3.1 The relative of the applicant, therefore, took the applicant to Medanta Hospital, which was the nearest hospital equipped to deal with the emergency situation of the applicant. The applicant was admitted in Medanta hospital immediately on 27.4.2015 at 3.07 p.m. after discharge from the said Kalyani Hospital. He remained under treatment at the said hospital till 29.4.2015. He was diagnosed to be suffering from Acute IWMI + Coronary Artery Disease and double vessel disease. He underwent Coronary Angiography and PTCA + stent to RCA and thereafter he was discharged from the said Medanta Hospital on 29.4.2015.

3.2 Thereafter applicant submitted his medical reimbursement claim incurred by him towards the treatment taken in Kalayani Hospital and Medanta Hospital for the period from 27.4.2015 to 29.4.2015 amounting to Rs.299994/- (Rs.45657/- for the expenses incurred at Kalayani Hospital and Rs.250000/- at Medanta Hospital and expenses on medicines).

3.3 The respondent allowed an amount of Rs.42000/- for the expenses incurred at Kalyani Hospital, which is on the panel of respondent department. However, respondent allowed only an amount of Rs.54471/- towards bill of Medanta Hospital and thereby refused full reimbursement of the actual expenses incurred by the applicant at Medanta Hospital, which is illegal and unjustified as held by the Hon"ble Supreme Court as well as Hon"ble High Courts in a catena of judgments.

3.4 Aggrieved by the said action of the respondent, the applicant submitted his representation dated 26.11.2015 requesting the respondent to reconsider his medical reimbursement claim but the same was rejected by the Grievance Committee and the same was communicated to vide order dated 28.7.2016, which is impugned by the applicant in this OA.

4. Pursuant to notice, respondent has filed reply in which it is stated that the applicant was admitted in Kalyani Hospital Pvt. Ltd. which is an empanelled hospital of DTC and he claimed a bill of Rs.45,657/- towards the same. The DTC Medical Board passed the said bill as per CGHS rates on 21.1.2015. Thus, in total an amount of Rs.43,097/- was passed and reimbursed to the applicant.

4.1 The applicant was, however, referred to higher centre for further management after getting discharged on the same day, i.e., 27.4.2015 from Kalyani Hospital and not by DTC Medical Board. The applicant was thereafter admitted in Medanta Hospital on 27.4.2015 which is not an empanelled hospital of DTC. The applicant claimed a bill of Rs.254837/- given by the said Medanta Hospital. However, as per the rules of the Corporation and as per Office Order No.16 and subsequent orders dated 21.2.1994 and 29.11.2005, the respondent has reimbursed the bill of the applicant as per AIIMS rates. The bills were passed by DTC Medical Board for Rs.59309/- as per AIIMS rates which is as per the rules and instructions on the subject.

4.2 It is further stated that applicant had moved an application on 26.11.2015 seeking reconsideration and payment of remaining amount. On 16.2.2016, the applicant was directed to appear before the Grievance Cell on 26.2.2016. The applicant appeared in person before the Grievance Committee and it has been observed by the Grievance Committee that as per rules of the Corporation, the employee concerned is entitled for reimbursement of medical bills as per AIIMS rates and not as per CGHS rates for non-empanelled hospitals. The applicant was informed about the decision of the Grievance Committee vide order dated 28.7.2016.

4.3 The respondent has lastly contended that the instant OA deserves to be dismissed by this Tribunal.

5. The applicant has also filed his rejoinder reiterating the averments made in the OA and denying the contents of the counter affidavit filed by the respondent. It is further stated that the applicant was admitted in emergency in Medanta Hospital, which is nearest hospital equipped to deal with the emergency situation of the applicant and as such having been admitted in emergency, he is entitled to full reimbursement of actual medical expenses incurred by him and in any case, he is entitled to reimbursement at CGHS rates, if not the actual expenses.

6. During the course of hearing, applicant in person submitted that as the Kalyani Hospital, which is one of the empanelled hospitals, referred the his case for higher centre for further management on 27.4.2015 and therefore, his relative took him to Madanta Hospital on 27.4.2017 at 3.07 p.m., which is

nearest hospital and equipped to deal with his emergency situation. Therefore, he is entitled to full reimbursement of medical expenses incurred by him at Madanta Hospital or otherwise at the CGHS rates.

7. Pre contra, learned counsel for the respondents submitted that applicant admitted in Kalyani Hospital Pvt. Ltd, which is an empanelled hospital of respondent department, and the bill in respect of the said hospital were cleared by the respondent as per CGHS rates. However, the medical reimbursement claim in respect of Medanta Hospital, which is not an empanelled hospital of the respondent department, was restricted to AIIMS rates as per the rules and instructions on the subject as the applicant instead of approaching to any other empanelled hospital of the respondent department having the facilities of higher centre for further management has approached to Medanta Hospital, however, the said Kalyani Hospital referred the case of the applicant only to higher centre for further management and the same higher centre facilities would also have been availed at any other empanelled hospital of the respondent department and the applicant would have asked for this by informing the Medical Board of the respondent department. But instead of doing this, the applicant himself approached to the said Medanta Hospital and as such the respondent department as per the rules and instructions on the subjected restricted the medical reimbursement claim of the applicant as per AIIMS rates, which is in accordance with the rules of the Corporation. In support of his contention, learned counsel for the respondents placed reliance on the judgments of the Hon"ble Apex Court in the cases of State of Punjab and others vs. Ram Lubhaya Bagga and others, (1998) 4 SCC 117, Confederation of Ex-Servicemen Associations and others vs. Union of India and others, (2006) 8 SCC 399 as well as of the Hon"ble Delhi High Court in the case of Delhi Transport Corporation vs. Harpal Kaur in LPA No.1304/2007 decided on 26.5.2008.

7.1 Lastly, learned counsel contended that the action of the respondents restricting the claim of the applicant at the AIIMS rates in the facts and circumstances of the case is just and proper and therefore the instant OA is liable to be dismissed by this Tribunal.

8. Heard applicant in person and learned counsel for the respondents and also perused the pleadings available on record.

9. It is admitted fact that applicant at the first instance admitted at Kalyani Hospital in emergent circumstances but the said Hospital referred the case of the applicant to higher centre for further management, which itself shows that there is no emergency at that time, the applicant would have contacted the medical board of the respondent department for availing the higher centre facilities for further management and the same would have been advised to the applicant by the medical board either in any of the empanelled hospital or otherwise any other hospital, if they found it is necessary for his treatment. However, instead of doing the same, the applicant himself approached to Medanta Hospital for availing the facilities of higher centre as per his own choice which is not

permissible as per the rules of the respondent department, as the rules of the respondent department provides that where the treatment has been availed in emergency from non-empanelled hospital the reimbursement will be made in accordance with the AIIMS rates provided the information given to DTC medical board within 24 hours as per office order no.16 dated 27.8.1991. The case of the applicant was also referred to the Grievance Committee which referred the same to the CMO, DTC for providing comments which provides as under:-

"As per discharge summary available in the file of treatment taken in non-panel hospital at page 21/cr., it is observed that PTCA and stenting to RCA was done at Medanta Hospital, Gurgaon. He was referred by treating doctor of Kalyani Hospital, Gurgaon to higher center for further management facts available at page 10 in the linked file. As per the rules of the corporation, i.e., as per OO No.16 & its subsequent order dated 21.2.1994, he is entitled for reimbursement as per AIIMS rates in regard to treatment taken in Medanta Hospital."

On the basis of the said comments, the Grievance Committee opined that "as per rules of the corporation the applicant is entitled for the reimbursement of medical bills as per AIIMS rates and not as per CGHS rates. Hence, no further action is required in this case at this stage".

10. The Hon"ble High Court in the case of Delhi Transport Corporation vs. Harpal Kaur in LPA No.1304/2007 decided on 26.5.2008 has observed as follows:-

3. This appeal is directed against the impugned judgment dated 19th May 2007 passed by the learned Single Judge of this Court allowing the Writ Petition (C) No.8194 of 2005 filed by the Respondent directing the appellant Delhi Transport Corporation (?DTC?) to reimburse the respondent (writ petitioner) the full amount paid by her to Batra Hospital for the treatment of angiography, angioplasty and other procedures, in terms of the medical reimbursement bills issued by the hospital for a sum of Rs.2,42,170/- within a period of six weeks, after deducting the amount of Rs.1,39,919/- already released by the DTC in favour of the respondent.

4. The brief facts are that the respondent was working as a Store Attendant at the dispensary of the Wazirpur Depot of DTC. She suffered cardiac arrest on 21st April 2004 and was taken first to Amar Leela Hospital, and thereafter to Batra Hospital. After undergoing treatment for angiography, angioplasty and other procedures, she was discharged from Batra Hospital on 24th April 2004 The total bill in the sum of Rs.2,42,170/- raised by the said hospital was paid by the respondent. When she claimed reimbursement of a sum of Rs.2,41,970/- towards medical expenses, the DTC sanctioned and released a sum of Rs.1,39,919/- on 24th September 2004 Aggrieved by the non-reimbursement of the balance amount as claimed by her, the respondent made a representation which was rejected by the DTC on 2nd March 2005. Thereafter she filed a Writ Petition (C) No. 8194/2005 in this Court.

5. The stand taken by the DTC before the learned Single Judge was that in terms

of the Circulars dated 19th August 2003 and 12th November 2003 only those rates as were stipulated therein were to be reimbursed for undergoing treatment in private hospitals. The learned Single Judge held that since the Respondent had undergone treatment at Batra Hospital, which was recognized and approved for specialized treatment, there was no justification for the DTC to deny the respondent full reimbursement of the charges over and above the package rates which DTC had agreed upon with the hospital. As regards the plea concerning the rates as restricted by the Circular dated 19th August 2003, the learned Single Judge held that it was liable to be turned down as it is the very same private hospital recognized and duly approved by the respondent (DTC) which has charged rates over and above the prescribed package rates.?

6. It is submitted by learned counsel for the Appellant that in view of the judgment of the Supreme Court in *State of Punjab v. Ram Lubhaya Bagga* 1998 (4) SCC 117, which was affirmed by the Constitution Bench of the Supreme Court in *Confederation of Ex-Servicemen Associations v. Union of India* (2006) 8 SCC 399, the claim of the respondent was not admissible. Reliance was also placed on the judgment of the Supreme Court in *State of Punjab v. Mohan Lal Jindal* (2001) 9 SCC 217.

7. Learned counsel for the Respondent on the other hand supported the impugned judgment of the learned Single Judge by contending that the Respondent had to be taken to Batra Hospital in an emergency and since that was a hospital approved by DTC for the purposes of treatment, she was entitled to reimbursement at the actual rates. Reliance was placed on the decision of the Supreme Court in *Surjit Singh v. State of Punjab* 1996 (2) SCC 336 and a circular of the DTC dated 12th November 2003 as per which higher rates for undergoing treatment in a recognized hospital was approved. It was submitted that in any event the reimbursement should be as per the rules of the DTC.

8. In the first place, it requires to be noticed that the circular dated 19th August 2003 specifies the admissible rates, for the purposes of medical reimbursement, when treatment is undergone at a private hospital. It makes it clear that where ? the treatment has been obtained from any other private hospital/nursing home duly certified by the Corporation?s Medical Board, the entitlement for accommodation, major operations, and diagnosis tests, etc. shall be limited to those of All India Institute of Medical Science or at actual whichever is lower.? The circular further states: ?While treatment in Govt./empanelled hospital, the employees shall be entitled for accommodation at Corporation?s expenses as per the following entitlement:

Pay Range Type of accommodation

- i) Upto Rs.1545/- p.m. General ward upto maximum Rs.20/- per day.
- ii) Rs.1546/- to Rs.2049/-p.m. Semi-paying ward.
- iii) Rs.2050/- to Rs.3209/- p.m. Private Room

iv) Rs.3210/- to Rs.5149/- p.m. Private A.C. Room

v) Rs.5150/- and above. Private Delux A.C. Room?

Two of the illustrations given were as follows:

A. An employee with a basic pay upto Rs.1545/- p.m. is admitted in a hospital where the charges of general ward is more than Rs.20/- per day or is admitted to semi-paying ward etc. then employee will only be allowed reimbursement of Rs.20/- per day.

B. An employee/officer with basic pay upto Rs.2675/- is admitted in an empanelled hospital and is occupying a semi-paying ward, though his entitlement is for a private room, he/she will be entitled to the charges of semi-paying ward only.?

9. This Court finds that on the facts of the present case, the judgment of the Supreme Court in Ram Lubhaya Bagga should apply. In that case, as per the previous policy of the Government of Punjab promulgated in 1991, the reimbursement of medical expenses incurred at certain designated recognized hospitals like Escorts, Apollo, etc. were admissible. A new policy was promulgated on 13th February 1995 according to which treatment could be undergone at any hospital. However, the reimbursement of medical expenses was to be restricted to the level of expenditure as per the rate fixed by the Director, Health and Family Welfare, Punjab for a similar treatment package or actual expenditure whichever is less. It was further stipulated that reimbursement of medical expenses would be according to the rates as prevalent in the All India Institute of Medical Sciences (?AIIMS?). It was contended before the Supreme Court that in terms of the earlier judgment in Surjit Singh, once the treatment was undergone at a recognized hospital, the actual rates prevalent in that hospital were admissible for the purposes of reimbursement.

This contention was expressly negated and it was held in para 29 of the decision in Ram Lubhaya Bagga (SCC p.130):

?29. No State or 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.?

11. In para 37 of the said judgment, on facts similar to the present case it was held: (SCC p.132)?37.

In the Civil Appeals arising out of SLP(C) Nos. 13167/97 and 12418/97, the

surgery at Escorts was after the introduction of the new policy and therefore the extent of medical reimbursement can be only according to the rates prescribed by AIIMS. However, the respondents therein are not entitled to the full expenditure that was incurred at Escorts. We, therefore, allow the appeals in part and direct that the respondents are entitled to reimburse only at AIIMS rate. The appellant will therefore reimburse the respondents to the extent within one month from today.?

12. The judgment in Ram Lubhaya Bagga has been expressly approved by the Constitution Bench of the Supreme Court in *Confederation of Ex-Servicemen Associations v. Union of India* 2006 (8) SCC 399. In paras 64 to 66 of the said judgment it was observed as under: (paras 64 to 66 PP 430)?64.

In our opinion, such a contributory scheme cannot be held illegal, unlawful or unconstitutional. Ultimately, the State has to cater to the needs of its employees- past and present. It has also to undertake several other activities as a 'welfare' State. In the light of financial constraints and limited means available, if a policy decision is taken to extend medical facilities to ex- defence personnel by allowing them to become members of contributory scheme and by requiring them to make 'one-time payment' which is a 'reasonable amount', it cannot be said that such action would violate fundamental rights guaranteed by Part III of the Constitution.

65. In *State of Punjab v. Ram Lubhaya Bagga*, a three-Judge Bench of this Court had an occasion to consider the question of change of policy in regard to reimbursement of medical expenses to its employees. Referring to earlier decisions, the Bench took note of ground reality that no State has unlimited resources to spend on any of its projects. Provisions relating to supply of medical facilities to its citizens is not an exception to the said rule. Therefore, such facilities must necessarily be made limited to the extent finances permit. No right can be absolute in a welfare State. An individual right has to be subservient to the right of public at large.

?This principle equally applies when there is any constraint on the health budget on account of financial stringencies.?

66. We are in agreement with the above view. In our considered opinion, though the right to medical aid is a fundamental right of all citizens including ex-servicemen guaranteed by Article 21 of the Constitution, framing of scheme for ex-servicemen and asking them to pay 'one time contribution' neither violates Part III nor it is inconsistent with Part IV of the Constitution. Ex- servicemen who are getting pension have been asked to become members of ECHS by making 'one time contribution' of reasonable amount (ranging from Rs. 1,800/- to Rs.18,000/-). To us, this cannot be held illegal, unlawful, arbitrary or otherwise unreasonable.? (emphasis supplied)

13. In the light of the categorical pronouncement of the Supreme Court, we are unable to concur with the view taken by the learned Single Judge in the instant

case that the expenditure incurred by the Respondent for a treatment at Batra Hospital, over and above the rates as approved by the DTC was required to be reimbursed.

14. Accordingly, this Court sets aside the impugned judgment of the learned Single Judge. The counsel for the appellant DTC does not contest the submission of learned counsel for the respondent that reimbursement must be in accordance with the circulars of the DTC including one dated 21st November 2003. If any amount is to be paid to mthe respondent as reimbursement in terms of DTC?s circulars that should be done by DTC forthwith."

11. In the result, in the facts and circumstances of the present case and for the reasons stated herein above, the present OA being devoid of merit is dismissed. There shall be no order as to costs.