
(2007) 05 DEL CK 0258

In the Delhi High Court

Case No : Writ Petition (C) No. 18218 of 2004

Jai Prakash

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 14-05-2007

Acts Referred:

Central Services (Medical Attendance) Rules, 1944 — Rule 6(1)(A)

Citation : (2007) 141 DLT 78

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Som Dutt Sharma, for the Appellant; Manoj Ohri, for the Respondent

Final Decision : Allowed

Judgement

Hima Kohli, J.—The present writ petition has been filed by the petitioner praying inter alias for directions to the respondent to reimburse the the petitioner for full amount paid by him to the National Heart Institute (hereinafter referred to as "the Institute") for an open heart surgery conducted on the petitioner and consequently, to pay the balance amount of Rs. 50,875/- to the petitioner.

2. The undisputed facts of the case are that the petitioner, who is a Daftari posted in the Ministry of Commerce and Industries, is a subscriber of the Central Government Health Scheme (CGHS). The petitioner underwent medical treatment for his heart ailment at the Institute for which permission was granted by the respondents on 12th March, 1999. The petitioner underwent a coronary angiography test in the said Institute for which he was granted an advance of Rs. 10,800/-. Upon completion of the tests, he was advised to undergo an open heart surgery at the Institute which is duly recognized by the Government for its employees to take specialized treatment. The Institute submitted an estimate of Rs. 1,35,000/- for performing the surgery on the petitioner. The petitioner applied to the respondent for medical advance of the said amount. He was reimbursed a sum of Rs. 89,100/- as against the claim of Rs. 1,35,000/-. The petitioner underwent the operation at the Institute on 1st June, 1999 and

thereafter submitted a medical reimbursement bill of Rs. 1,39,975/- along with all relevant documents duly verified by the Managing Director of the Institute. After being discharged, the petitioner continued undergoing treatment at the Institute and represented to the respondent that he is entitled to full reimbursement of the expenses incurred on the surgery undertaken by him. The matter was referred by the concerned Ministry to the CGHS for obtaining their comments. However, vide order dated 18th October, 2002, the Ministry informed the petitioner that his request could not be accepted by the department. Aggrieved by the aforesaid rejection, the petitioner has filed the present writ petition.

3. Counsel for the petitioner submits that the petitioner being a Government servant, is entitled to treatment free of charge at such a Government hospital or near the place where he fell ill, as can in the opinion of the authorised medical attendant, provide necessary and suitable treatment. In this regard, he relies on Rule 6(1)(A) of the Central Services (Medical Attendant) Rules. He further submits that the Institute is a recognized hospital for specialized treatment for cardiac disease and open heart surgery and is an approved hospital as per the Office Memorandum dated 18th September, 1996 and that once the petitioner was permitted to obtain treatment from the Institute, the respondent cannot deny actual reimbursement of the treatment. Reliance has also been placed on a judgment of this Court in the case of V.K. Gupta v. Union of India and Anr. WP (C) No. 4305/2001 decided on 5th April, 2002, to state that the case of the petitioner is identical to the facts of the aforesaid case where directions were sought by the petitioner therein to the respondent for reimbursement of the full amount paid to a private recognized hospital for an open heart surgery undergone by the said petitioner. After considering the case of the parties therein, the court held that the petitioner was entitled to full reimbursement of the expenses incurred on the speciality hospital where he was referred for specialized treatment after the respondent had accorded permission. Counsel for the petitioner also submitted that once an approved package rate has been arrived at between the respondent and the concerned hospital, in case the hospital charged amounts over and above the said package rate, the respondent was under an obligation to pay such charges and it was between the respondent and the hospital to sort out the said issue and that the petitioner could not be held liable to pay the difference from his own pocket. In support of the aforesaid contention, the counsel for the petitioner places reliance on the following judgments:

- (i) State of Punjab and others Vs. Mohinder Singh Chawala, etc.,
- (ii) Narendra Pal Singh v. Union of India and Ors. 1999 III AD (Del) 769.
- (iii) Sqn. Commandar Randeep Kumar Rana Vs. Union of India (UOI),
- (iv) Prithvi Nath Chopra v. Union of India and Anr. 111 (2004) DLT 190.
- (v) Milap Singh Vs. Union of India (UOI) and Another,

(vi) Keshav Kishore Sharma Vs. Municipal Corp. of Delhi,

(vii) K.S. Mathew v. Union of India and Anr. 122 (2005) DLT 450.

(viii) R.D. Gupta Vs. DDA and Others,

4. Per contra, counsel for the respondent submits that reliance placed by the petitioner on Rule 6(1)(A) of the Central Services (Medical Attendant) Rules is misplaced as the said Rules are not applicable to the Government servants who are governed by the CGHS. It is further contended that the Office Memorandum dated 18th September, 1996 stipulates that the expenditure to be reimbursed by the parent department would be restricted to the package deal/rates approved by the Government from time to time and any expenditure in excess of the approved rate/package deal shall have to be borne by the beneficiary. Counsel for the respondent also referred to Office Memorandum dated 22nd April, 1998 to state that the rates for coronary angiography from the recognized private hospitals mentioned in Annexure-I to the said Office Memorandum were valid for two years with effect from issuance of the Office Memorandum, i.e. with effect from 22nd April, 1998. The said rate was Rs. 89,100/- for which amount the petitioner had been duly reimbursed. Thus, according to the respondent nothing further was payable to the petitioner. It was also submitted that unlike the case of V.K. Gupta (supra), where the Office Memorandum issued on 18th September, 1996 was valid for a period of two years and the surgery undergone by the petitioner therein was after the said Office Memorandum had elapsed, in the present case, the petitioner was governed by the Office Memorandum dated 22nd April, 1998 which was in force for a period of two years and as the petitioner had undergone the surgery on 1st June, 1999 the Office Memorandum was very much applicable and any amount over and above the prescribed rate was not liable to be reimbursed to the petitioner. It was also contended on behalf of the respondent that the policy of the respondent with regard to medical reimbursement ought not to be interfered with by the court in view of the judgment rendered by the Supreme Court in the case of State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.,

5. I have heard the counsels for the parties and also perused the judgments relied upon by them.

6. It is now settled law that right to health is an integral part of the right to life and that it is the duty of the State to bear the expenditure incurred by a Government servant suffering from ailments which require treatment at approved speciality hospitals. Reliance in this regard can be placed on the judgment of the Supreme Court in the case of Mohinder Singh Chawla (supra), relevant extract of which is reproduced hereinbelow:

Para 4 : ...It is now settled law that right to health is integral to right to life. Government has constitutional obligation to provide the health facilities. If the Government servant has suffered an ailment which requires treatment at a specialised approved hospital and on reference whereas the Government servant

had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee. The High Court was, Therefore, right in giving direction to reimburse the expenses incurred towards room rent by the respondent during his stay in the hospital as an inpatient.

7. Once the respondent itself recommended the treatment to be taken by the petitioner at the Institute, being an approved hospital for specialized treatment, there is no justification for the respondent to deny him full reimbursement on the basis of the charges admittedly incurred by the petitioner over and above the package rate which the respondent had agreed upon with the hospital. The plea of the respondent that the respondent is bound by the terms and conditions laid down in the Office Memorandum dated 22nd April, 1998 for making reimbursement of charges of by-pass surgery in respect of private recognized hospitals in terms of the said Office Memorandum, is liable to be turned down as it is the very same private hospital, recognized and duly approved by the Government, which has charged rates over and above the package rate prescribed by the respondent.

8. Thus, if the respondent has reservations with regard to the rate charged by the Institute in question, it is for the respondent to take up the issue with the Institute. However, this plea cannot be taken up by the respondent for turning down the claim of the petitioner for reimbursement in terms of the package duly offered to the petitioner. The respondent is under an obligation to pay such charges as the petitioner has incurred over and above the package rates fixed between the respondent and the concerned Institute in the first instance. However, the respondent is not precluded from recovering the said amounts beyond the rate to be charged by the private recognized hospitals from the Institute itself.

9. The petitioner cannot be deprived of his right to the reimbursement of the entire amount paid by him on account of his surgery. Reference made by the respondent to the judgment of the Supreme Court in the case of Ram Lubhaya Bagga (supra) can be of no help in this case as the respondent itself has directed the petitioner to take medical treatment and undergo surgery at a private hospital duly recognized by it. Once package rates to be charged by the private recognized hospitals have been fixed by the respondent there is no reason whatsoever to contend that the difference in the rates prescribed and those charged by the private hospital is to be borne by the Government servant.

10. For the reasons stated above, the writ petition is allowed. The respondent is directed to reimburse the petitioner for the full amount paid by him to the Institute for the open heart surgery undergone by him, in terms of the medical reimbursement bill issued by the Institute, after deducting the amount of Rs. 89,100/- already released to the petitioner.