
(2019) 01 CAT CK 0077

In the Central Administrative Tribunal

Case No : Original Application No. 781 Of 2018

Kewal Krishan

APPELLANT

Vs

Chairman And Managing Director And Ors

RESPONDENT

Date of Decision : 18-01-2019

Acts Referred:

Citation : (2019) 01 CAT CK 0077

Hon'ble Judges : A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : Ranvir Singh, Sangita Rai, Pradeep Singh Tomar

Final Decision : Allowed

Judgement

1. The applicant has filed the present OA seeking the following relief:-

"A) Respondent No.2 be made accountable for not examining applicant's representation dated 17.8.2017 pertaining to non-payment of medical bills amounting to Rs.188,834/- for treatment of Mrs. Satya Wanti, aged around 84, applicant's mother, Annexure A-1;

B) Direct respondent No.2 to pay the medical bill of Rs. 1,88,834/-;

C) Pay cost of the Original Application;

D) Pass any other order/s that this Hon'ble Court may deem fit in the fact and circumstances of the case."

2. Briefly the facts of the case, as stated by the applicant, are as follows:-

2.1 The applicant initially joined the Department of Telecommunications as Telegram Messenger. On formation of BSNL, he was absorbed in it and had been working there till his retirement on 31.05.2015.

2.2 It is submitted that applicant's mother Smt. Satya Wanti was admitted in Kalra Hospital on 31.08.2014 in emergency. Due to non-availability of proper

medical attention in Kalra Hospital, she was shifted to Dr. B.L. Kapur Hospital on 06.09.2014, where due to non-availability of bed in ICU, she was again shifted to Maharaja Agarsen Hospital and admitted on 06.09.2014 in emergency. This is an approved hospital for treatment of BSNL's employees and their dependents. The hospital issued the Admission and Emergency Certificates Annexure A-16 (colly). Thereafter, the applicant applied for permission for indoor treatment of his mother in the said Hospital on the prescribed proforma through proper channel on 08.09.2014, which was duly recommended by the Sub-Divisional Engineer and Divisional Engineer for grant of permission (Annexure A-17).

2.3 On 09.09.2014, respondents sought reason for shifting the patient to Maharaja Agarsen Hospital stating that the discharge summary dated 06.09.2014 of Kalra Hospital suggested that the patient was stable.

2.4. The applicant gave detailed reasons on 10.09.2014 for shifting his mother from Kalra Hospital to Dr. B.L. Kapur and then to Maharaja Agarsen Hospital where his mother expired on 21.09.2014. The respondents vide letter dated 22.09.2014 refused permission for indoor treatment in Maharaja Agarsen Hospital. The applicant on 11.11.2014 gave a detailed narration and justification for the sequence of events relating to his mother's hospitalisation. This was rejected on 21.02.2015.

2.5 The applicant on 15.05.2015 requested the respondents for reimbursement of bills incurred on the treatment of his mother at CGHS rates. Thereafter the applicant retired on 31.05.2015 and he was directed by the respondents vide order dated 30.07.2015 to send his application through the SSA head, GMM, New Delhi, which he did on 04.08.2015. The same was, however, returned vide letter dated 12/14.08.2015 reiterating the earlier stand.

2.6 The applicant submitted a representation to the Respondent No.2 on 17.08.2017 along with copies of the relevant documents for settlement of the medical bills to the tune of Rs.188,864/- but to no avail.

3. In support of the relief claimed, the applicant has mainly raised the following grounds:

3.1 Refusal of permission by the respondents to take treatment in Maharaja Agarsen Hospital, one of the approved hospitals by the respondents, without assigning any reason is illegal, arbitrary, whimsical and in violation of the principles of natural justice.

3.2 As per the instructions issued vide letter dated 13.08.2012 (Annexure A-7 colly.) the medical claim of the applicant was required to be settled and released for payment within one month of the receipt.

3.3 Both Kalra Hospital and Maharaja Agarsen Hospital are duly approved for treatment of BSNL employees and their dependents and they cannot be denied such treatment.

3.4 Once the applicant sought permission for indoor treatment of his mother on 08.09.2014 (Annexure A-17) through proper channel, duly recommended by the controlling officers, objection by SDE, a non-medico official of respondents without understanding and appreciating the medical terms and the gravity of ailment is bad in law, particularly when the said official has failed to appreciate the reasons advanced by the applicant in his reply dated 11.09.2014.

3.5 The applicant is a low paid employee and cannot afford to make even part payments of the bills raised by the hospital.

3.6 The objection raised by the respondents on 30.07.2015 after the retirement of applicant was nothing but a wilful act of harassment.

4. The respondents in their reply have submitted that the applicant was given permission for indoor treatment for his mother at his request on 02.08.2014. She had undergone treatment at Kalra Hospital from 01.08.2014 to 28.08.2014 but the hospital did not inform the respondents about the prolonged treatment. The applicant again applied for permission for indoor treatment of his mother in the same hospital for which permission was accorded on 01.09.2014. She remained admitted from 31.08.2014 to 06.09.2014. As per the discharge summary of the said hospital the condition of his mother was stable. Thereafter the applicant admitted his mother in Maharaja Agrasen hospital without any intimation to the respondents and applied for permission on 08.09.2014 for indoor treatment from 06.09.2014 from the said hospital, which was refused. Further correspondence followed and clarifications and comments were sought on certain points. The applicant was then intimated by the respondents that the case has been examined and it has been found that the reason for not permitting the treatment in Maharaja Agrasen Hospital has been found to be justified and accordingly rejected his claim for medical reimbursement.

5. The applicant filed rejoinder to the reply filed by the respondents, more or less reiterating the pleas made in the OA. Further, he has placed reliance on a decision of the Hon'ble Supreme Court in the matter of Shiva Kant Jha v. Union of India, [2018 AIR (SC) 1975].

6. I have carefully perused the pleadings and have also considered the arguments advanced by the learned counsels for the two sides.

7. BSNL has a Medical Policy for its Employees, a copy of which is on record. In the present case, Para 2.2.0 of Part-1 of the said Policy is relevant, which reads as follows:-

"2.2.0 Treatment in recognized hospitals/nursing homes etc.:

An employee (including retired employee) and his/her dependants shall be entitled to the reimbursement of expenses at the approved rates at all hospitals recognized from time to time by the management. Till such time as approved rates in recognized hospitals are not notified by BSNL management, the reimbursement will be as per actual expenses basis. Entitlement under this

clause will be separate and distinct from the ceiling amount prescribed in para 2.1.0 and 2.1.1 under domiciliary/out door treatment. All expenditure incurred in connection with the treatment will be reimbursable subject to a limit on the room rent which will be as per Annexure-I."

In this context, Para-2 of Part-3 of the Guidelines for Indoor treatment is also relevant, which reads as under:-

"2. In all cases of extreme emergencies, the employees concerned shall have to inform the SSA Head of his controlling officer soon after hospitalization for indoor treatment. In order to ensure that the facility is used by the employees and his dependent family members only, a designated officer of BSNL may visit the hospital and verify the authenticity of the beneficiary."

From the above, it is clear that BSNL has a Medical Policy which allows for reimbursement of expenses during hospitalization and also deals with emergencies.

8. In the present case, it is nowhere in dispute that the mother of the applicant was suffering from illness. During her illness, she was admitted to Maharaja Agarsen Hospital on 06.09.2014 after initially being admitted in Kalra Hospital, and taken to Dr. B.L. Kapoor Hospital. As per the reply given by the respondents, they granted permission for her hospitalization from 01.09.2014 to 06.09.2014 in Kalra Hospital.

9. The only point of contention is regarding the reimbursement of medical expenses for the treatment of the mother of the applicant in Maharaja Agarsen Hospital from 06.09.2014 onwards. It is not in dispute that Maharaja Agarsen Hospital was an empanelled hospital on the list of BSNL. The applicant submitted the Emergency Certificate issued by the Maharaja Agarsen Hospital on 06.09.2014. The relevant portion of the certificate reads as under:-

"It is further certified that it was very much to give hospitalization to the patient because of her serious condition".

10. The respondents vide order dated 09.09.2014 sought reason for shifting the patient to Maharaja Agarsen Hospital, which reads as under:-

"Subject:- Regarding indoor treatment in r/o Smt. Satyawati M/o Sh. Kewal Krishan, TM Ref: DE/OFC/RJN/ND/A-18/14-15/37 dated 08.09.2014

With reference to above cited subject that you have admitted your mother in Kalra Hospital on 01.08.2014 & again admitted on 31.08.2014. As per discharge summary dated 06.09.2014 condition of patient was stable and discharging doctor suggested follow up with Dr. R.N. Kalra at this hospital after five days/ SOS, but instead of contacting Dr. R.N. Kalra, you have admitted your mother in Maharaja Agarsen Hospital on same date i.e. 06.09.2014. The reason for the change has not been intimated and it is not clear from the documents submitted as to why admission to the other hospital, on the date of discharge has been

done.

Please clarify the above points so the necessary action on the letter seeking permission may be taken".

11. The applicant gave his reply through letter dated 11.9.2014 and sought permission for indoor treatment of his mother in Maharaja Agarsen Hospital. The same was, however, rejected on 22.09.2014 as per the following:-

"Subject:- Permission for indoor treatment.

You have submitted papers for permission letter for indoor treatment in Maharaja Agarsen Hospital of your mother. Based on permission letter issued from this office. Your mother has been admitted in Kalra hospital from 01.08.2014 to 28.08.2014 and again from 31.08.2014 to 06.09.2014. She was relieved from said hospital on 06.09.2014, when her condition was stated to be stable. As per discharge summary you were satisfied with the treatment in case of emergency same hospital was to be contacted.

In such situation the permission for indoor treatment in Maharaja Agarsen hospital for date 06.09.2014 cannot be given.

This issues with the approval of Addl. GMM ?NTR? ND".

12. The applicant thereafter through his letter dated 11.11.2014 gave a detailed narration and sequence of events. However, without going into any due examination, it was rejected by the respondents vide order dated 21.02.2015.

13. From the documents placed on record, it is quite clear that the mother of the applicant was suffering from an illness which required hospitalization. She had previously been hospitalized from 01.08.2014 to 28.08.2014 which was within the knowledge of the respondents and they have given permission for the same. Subsequently, she had been hospitalized in Kalra Hospital from 31.08.2014 to 06.09.2014, which was again approved by the respondents. The Discharge Summary issued by Kalra Hospital mentions that "We have received all the documents concerning above patient and our patient has been discharged to our full satisfaction". This was signed by Patient/Attendant.

This statement can in no way be taken to mean that the person signing it was satisfied with the treatment. It only relates to the formalities of discharge. The respondents have made a totally wrong interpretation in their communication dated 22/09/2014 quoted above.

The respondents have also, in the said letter, contended that the mother of the applicant was relieved from the hospital when her condition as per the Discharge Summary was ?stated to be stable?. It is well known that this is a commonly used phrase in medical parlance and can by no stretch of imagination be taken as a certificate of fitness. It is quite understandable that the applicant was not satisfied with the treatment in that hospital and would have wanted to provide the best available medical care for the treatment of his mother?s illness. There is

no conceivable reason why else he would go through the trouble of shifting his mother from one empanelled hospital to another. It is quite strange that the respondents have repeatedly refused to consider his request relying on their own conclusions which were vague and not based on medical knowledge or evidence, while totally ignoring medical opinion as given in the Emergency Certificate given by Maharaja Agarsen Hospital

14. The applicant had been diligently following the prescribed procedure and submitting the required applications with supporting documents but the respondents in a manner which is totally inexplicable have not taken any notice of these pleas. The Emergency Certificate provided by the concerned hospital abundantly makes it clear that it was a case very much requiring hospitalisation because of the seriousness of the patient's condition and I cannot understand how even after that the respondents continued insisting that the applicant's mother did not require indoor treatment. In the end she expired on 21.09.2014 and this fact itself should have left no further scope for argument, but it made no difference to the respondents and they continued on their own track with total lack of compassion and reason.

15. The learned counsel for the applicant has cited the order of the Hon'ble Apex Court in the case of Shiva Kant Jha (supra), the relevant portions of this judgment are reproduced below:

"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."

16. The judgment of the Hon?ble Apex Court makes it abundantly clear that the respondents are responsible for taking care of healthcare needs and wellbeing of the their employees and pensioners. In this case the treatment was allowed to be taken even in a non-empanelled hospital in emergency conditions. In the present case this is not even an issue as the treatment is in an empanelled hospital but still the applicant is being denied what is rightfully his due.

17. To conclude, there is no doubt that the mother of the applicant required hospitalization because of the seriousness of her condition, and the applicant is entitled to reimbursement of the expenses incurred on her treatment. I would also like to observe that the respondents acted with total lack of compassion in a most unreasonable and arbitrary manner and their action is not only in clear violation of rules and law but also seems to be taken with a view to obstinately deny the claim of medical reimbursement to the applicant.

18. In view of the above, the OA is allowed and the respondents are directed to release to the applicant the payment for reimbursement of medical bills incurred on the treatment of his mother. Considering the facts and circumstances of the case and in view of the observations made in Para-17 above, it would be in the fitness of things that a cost of Rs. 25,000/- (Rupees twenty five thousand only) is also imposed on the respondents to be payable to the applicant. The respondents shall carry out the above directions within a period of two months from the date of receipt of a certified copy of this order.