

(2018) 12 CAT CK 0135

In the Central Administrative Tribunal

Case No : Original Application No. 2277 Of 2018

Kiran Pal

APPELLANT

Vs

Union Of India Through And Ors

RESPONDENT

Date of Decision : 28-12-2018

Acts Referred:

Constitution Of India, 1950 — Article 21

Citation : (2018) 12 CAT CK 0135

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : Gaya Prasad, K.K. Sharma

Final Decision : Allowed

Judgement

1. Briefly stated the facts of the case are that the applicant in OA was appointed as an Assistant Loco Pilot in the Railway Department in 02.04.1990. He took voluntary retirement from service w.e.f. 25.09.2015 due to poor health. The applicant is availing the Railway Medical Facilities and is in possession of medical card issued to him on 07.01.2016.

2. On 08.03.2016, the applicant felt severe chest pain coupled with restlessness and nausea, symptoms of a heart attack. The family members of the applicant rushed him to the nearby private ARTEMIS Hospital, Sector-51, Gurgaon, where, reportedly, the applicant was admitted in an unconscious situation.

3. The patient underwent essential investigations like coronary angiography, which revealed TVD followed by successful PTCA stent to LAD. During the procedure patient went into bradycardia followed by Cardiac arrest, for which CPR was done as per ACLS protocol and patient was put on mechanical ventilation, and shifted to intensive care unit, after getting stable, he was discharged from the Hospital on 14.03.2016.

4. During the said admission period, an amount of Rs. 5,55,790.83 was spent on his treatment. The applicant submitted the aforementioned medical bill for

reimbursement for Rs. 5,55,790.83 on 01.04.2016 to the Chief Medical Superintendent, Northern Railway, Divisional Hospital, Delhi stating that treatment of Heart Disease of K/C of ACS-STEMI-Anteroseptal wall MI was done in ARTEMIS Hospital in an emergent situation. The Surgical Procedure of Coronary Angiography + PTCA, had to be performed in the said hospital to save the applicant's life.

5. The applicant submits that an amount of Rs. 2,04,434/- out of Rs.5,55,790.83/- has been reimbursed to the applicant but the balance amount of Rs.3,51,356/- was rejected by the respondents. The applicant preferred an appeal to the Appellate Authority i.e. Chief Medical Director, Northern Railway, Head Quarter office, Baroda House, New Delhi on 21.08.2017 but to no avail. The applicant then filed an OA No.1336/2018 against the inaction on his appeal which was disposed of on 04.04.2018 with certain directions to the respondents. Thereafter, the appeal of the applicant was considered and rejected vide the impugned order dated 18.09.2017 holding that the medical expenditure incurred by the applicant has been calculated and sanctioned on CGHS rates and the remaining amount cannot be considered as per rules.

6. It is averred in the OA that right to life as enshrined under Article 21 of the Constitution of India includes health. Hence, denial of reimbursement of medical bills tantamounts to denial of this right of the applicant, which is illegal and unconstitutional. To strengthen his stand, the applicant has relied upon the following judgments:-

"1. Surjit Singh Vs. State of Punjab & Ors.

2. Shiva Kant Jha Vs. Union of India & Ors. WP (C) No.694/2015.

3. K.K.Kharbanda Vs. UOI and Ors. In WP (C) No.6049/2005.

4. Judgment of CAT, PB, New Delhi in Hardayal Vs. Chief Secretary, Govt. of NCT of Delhi & Anr.(OA No.4479 of 2011)

5. Hon'ble Delhi High Court in Mohd. Ahmed Vs. Union of India & Ors (WP (C) 7279/2013).

6. Hon'ble CAT, Principal Bench, New Delhi in Yogesh Nirala Vs UOI & Ors. (OA 437/2014).

7. The applicant has filed this OA seeking the following reliefs :-

"(i) to allow the O.A.;

(ii) to quash and set aside the impugned order dated 18.09.2017 (Annexure A-1) and further direct the Respondent no.3 to reimburse the remaining balance amount of Rs.3,51,356/- as incurred on the treatment of the Applicant in Emergency condition along with interest @ 18% p.a. thereon from the date of submitted the claim application for reimbursement i.e. 01.04.2016 ; and

(iii) to pass any other order as this Hon'ble Tribunal may deem fit and proper."

8. The respondents in their counter affidavit concede that the medical claim for reimbursement incurred towards the treatment of the applicant was scrutinised and justified as an emergency case by the competent authority. After calculating the CGHS package rates the admissible amount as per CGHS rates -came to Rs.2,04,434 which has been reimbursed to the applicant. The respondents also contend that the discharge summary of the ARTEMIS hospital shows that at the time of admission on 8. 03.2016 the applicant was oriented and there is nothing to show that he was unconscious at the time of admission, as alleged by him. The appeal of the applicant was duly considered but not found tenable by the Appellate Authority, hence the reimbursement of remaining amount (Rs.3,51,356/-) was rejected.

9. I have gone through the facts of the case carefully. It is not disputed by the respondents that the applicant was admitted to a private hospital i.e. ARTEMIS hospital in Gurgaon, in a state of emergency. It is also not refuted that later (during the course of treatment) the condition of the applicant deteriorated due to which he suffered bradycardia, for which CPR was performed on him and he was put on a ventilator. The applicant was shifted to ICU, subsequently on stabilisation, he was discharged from the hospital on 14.03.2016.

10. To my mind, whether the applicant was conscious or unconscious at the time of admission, is not relevant. What, however, is relevant is that the condition of the applicant was critical leaving no alternative with his family members to rush him to the ARTEMIS hospital, to save his life. It is not the case of the respondents that the medical claim of the applicant is fake or inflated.

10. 1 The applicant in the OA has relied upon catena of judgments wherein different judicial fora has upheld the claim of medical reimbursement of employees, who have had to take treatment in emergent situations from private hospitals.

In the case of Shiva Kant Jha Vs. UOI (supra), the Hon'ble Apex Court on 13.04.2018 held that survival of a person is the prime consideration, and in those case where the applicant is struggling for his survival he certainly cannot be expected to take prior permission from the respondents or be expected to adhere to rules before undergoing necessary treatment. Paras 14 & 15 of the said judgment stipulate as under:-

"(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."

10.2. In the matter of K.K. Kharbanda Vs. UOI WP (C) No. 6049/2005 the Hon'ble Delhi High Court has observed that in case an employee requires a specialised treatment in an approved hospital it is the duty of the Government to bear or reimburse the expenses. Para-17 of the said judgment states as under:-

"17. The law is therefore, well-settled that right to health is an integral part of life and the Government has constitutional obligation to provide the health facilities to its employees or retired employees and in case an employee requires a specialised treatment in an approved hospital it is the duty of the Government to bear or reimburse the expenses. It is in this context that the Supreme Court in Mohinder Singh Chawla etc. (Supra) observed as under:

"It is now settled law that right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities. If the government servant has suffered an ailment, which required treatment at, a specialized approved hospital and on reference whereat the government servant has 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."

11. In view of the facts and circumstances of the case there is no doubt that the admission of the applicant took place in an emergent condition, as admitted by the respondents in their counter. The sole reason for rejection of his claim is that the CGHS rates fall short of the actual amount spent on his treatment. This cannot be a hurdle for full reimbursement, as is clear from the aforementioned judgments, as well as other citations mentioned by the applicant in the OA.

12. I, therefore, allow this OA and set aside the impugned order dated 18.09.2017 (Annexure A-I). The respondents are directed to reimburse the

balance amount of Rs. 3,51,356/- incurred by the applicant on his treatment within a period of three months from the date of receipt of a certified copy of this order (after due verification, as per law). I am, however, not inclined to grant any interest on the same. No costs.