(2013) 10 DEL CK 0047

In the Delhi High Court

Case No : Writ Petition (C) No. 6517 of 2012

Nina Singh — APPELLANT

Vs

DVB Employees Terminal Benefit Fund and Others — RESPONDENT

Date of Decision : 10-10-2013

Acts Referred:

Citation : (2013) 10 DEL CK 0047

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Rajiv Dewan, for the Appellant; Sumeet Pushkarna and Ms. Sara Sundaram for R-1, Ms. Sana Ansari, for Ms. Zubeda Begum, Standing Counsel, GNCTD and Mr. A.K. Sinha, for Mr. S.N. Choudhri, for R-3, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—The petitioner is the widow of late Shri V.K. Singh, who was working as an Executive Engineer with the erstwhile Delhi Vidyut Board and later became an employee of respondent No. 3/BSES Rajdhani Power Limited, on unbundling of Delhi Vidyut Board, and was entitled to medical benefits available to the retired and superannuated employees. The expenses incurred on his medical treatment were required to be reimbursed by respondent No. 1/DVB Employees Terminal Benefit Fund. In the night of 7.7.2009, late Shri V.K. Singh who was suffering from various ailments including Coronary Heart Disease, was taken to Max Super Speciality Hospital (for short ''Max Super Speciality), in emergency condition, and was admitted to ICU of the said hospital. As would be seen from the Discharge Summary dated 18.8.2009 issued by the aforesaid hospital, late Shri V.K. Singh was on dialysis and CAPD since 5.10.2008. He was also hypertensive with known case of CAD and had undergone PTCA (implantation of stent) in the year 2000. He had an episode of VT with hypotension at 4:00 a.m. on 18.8.2009 which was reversed by DC shock and he was sedated on ventilator. He was then transferred under a Cardiologist for further management.

On the aforesaid discharge from Max Super Speciality late Shri V.K. Singh was

admitted in Max Devki Devi Heard & Vascular Institute, 2, Press Enclave Road, Saket, New Delhi (for short ''Max Devki Devi), under a cardiologist Dr. Praveen Chandra. Shri V.K. Singh, expired in the aforesaid hospital on 26.8.2009. A perusal of the Discharge Summary issued by Max Devki Devi would show that Shri V.K. Singh was admitted to the said hospital on 18.8.2009 for further management, pursuant to an episode of VT which he had at 4:00 a.m. on that day.

The petitioner has been reimbursed for the expenses incurred in Max Devki Devi but no payment has been made to her for the expenses incurred in Max Super Speciality on the ground that the aforesaid hospital was not an empanelled hospital and late Shri V.K. Singh had gone there for routine treatment despite knowing that it was not an empanelled hospital. This is also the case of the respondents in the reply that Max Devki Devi is a hospital different from Max Super Speciality.

2. A conjoint reading of the Discharge Summaries issued by Max Devki Devi and Max Super Speciality would show that the discharge of Shri V.K. Singh from Max Devki Devi on 18.8.2009 was only a technical discharge since on account of VT episode that occurred at 4:00 a.m. on that date, he required specialized treatment at Max Super Speciality under a Cardiologist. Both the aforesaid hospitals are under the same management and are housed in adjoining buildings. In fact, Dr. Alka Bhasin who issued the emergency certificate on the letterhead of Max Devki Devi was the very same Doctor under whom late Shri V.K. Singh was admitted in Max Super Speciality on 7.7.2009. This also shows that both the hospitals are under a common management and the Doctors attached to these hospitals are giving treatment to the patients admitted in Max Devki Devi as well as Max Super Speciality. Therefore, this is not a case of a patient getting discharged from a hospital on recovering from illness, going home and then going to another hospital for treatment of an altogether different ailment. Late Shri V.K. Singh continued to be hospitalized w.e.f. 7.7.2009 till he breathed his last, the only intervening factor being that up to 18.8.2009 he was treated in Max Devki Devi in an adjoining building. The petitioner has already been reimbursed for the treatment taken at Max Devki Devi and the only dispute is with respect to the expenses incurred at Max Super Speciality.

3. A perusal of the Emergency Certificate filed by the petitioner would show that late Shri V.K. Singh was admitted to the hospital in an emergency condition when he complained to severe breathlessness, restlessness and chest pain. The critical nature of his condition can be gauged from the fact that he remained admitted in the hospital continuously till he expired on 26.8.2009.

4. In WP (C) No. 5576/2012 titled Jai Pal Aggarwal Vs. Union of India decided by this Court on 30.8.2013, the petitioner, a pensioner entitled to CGHS benefits was taken to Medanta Hospital for treatment in an emergency condition. He underwent a surgery there and paid an amount of Rs. 2,24,120.55 to the aforesaid hospital. However, only a sum of Rs. 25,731/- was paid to him on the

ground that Medanta Hospital was not on the panel of CGHS, at the time the petitioner was admitted in the said hospital. His claim for the rest of the amount having been rejected, he approached this Court by way of the aforesaid writ petition. The writ petition was opposed on the ground that no permission from the competent authority was taken by the petitioner for treatment at a non-empanelled private hospital and therefore, he was entitled to reimbursement as per CGHS package rate for NABH accredited hospitals and calculated as per the aforesaid package rates, payment of Rs. 25,731/- was made to him. Allowing the writ petition, this Court inter alia observed and held as under:

4. Clause 10 of MH & FW, OM No.S. 11011/23/2009-CGHS D.H./Hospital, Cell (Part-I), dt. 17.8.2010 reads as under:

10. In case of treatment taken in emergency in any non-empanelled private hospitals, reimbursement shall be considered by competent authority at CGHS prescribed packages/rates only.

Vide OM of even number dated 13.9.2010, CGHS clarified as under:

2. After the issue of the above referred Office Memorandum of 17th August, 2010, CGHS has received requests for clarification as to whether they will be categorized as "super-speciality hospitals" and that they can charge rates fixed for Super-speciality hospital. It is clarified that the entitlement of hospitals to super-speciality rates will not be because they perceive themselves to be super-speciality hospitals, but subject to their fulfilling the eligibility conditions in the tender document for being classified as super-speciality hospitals. The qualifications as mentioned in the tender document, to be eligible for qualifying under different categories of hospitals, are stated below:

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Super-speciality Hospitals with 300 or more beds with treatment facilities in at least three of following Super Specialities in addition to Cardiology & Cardiothoracic Surgery and Specialized Orthopaedic Treatment facilities that include Joint Replacement surgery:

? Nephrology & Urology incl. Renal Transplantation

? Endocrinology

? Neurosurgery

? Gastroenterology & Gl. Surgery incl. Liver Transplantation

? Oncology - (Surgery, Chemotherapy & Radiotherapy)

xxx

B. Eligibility Criteria

(i) The Hospitals must fulfill the requirements of one of the categories of

hospitals indicated at (A) above.

(ii) The hospitals that are not already empanelled by CGHS must be accredited by National Accreditation Board for Hospitals and Health Care providers (NABH) or its equivalent such as Joint Commission International (JCI) of USA, ACHS of Australia or by any other accreditation body approved by International Society for Quality in Health Care (ISQua).

Or

Must have obtained entry level pre-accreditation from NABH at the time of submission of bid. Such hospitals would however have to obtain final accreditation from NABH by 31st August, 2010 failing which they shall be removed from CGHS panel.

5. It is not in dispute that the petitioner had to take treatment at Medanta Hospital in an emergency condition. The emergency certificate issued by Medanta Hospital clearly shows that he was admitted through emergency with complaints of acute urinary retention and haematuria and was advised robotic radical prostectomy on 21.7.2011. Therefore, the petitioner was entitled to reimbursement in terms of clause 10 of the OM dated 17.8.2010 issued by CGHS. This is an admitted case that though Medanta Hospital was not empanelled with CGHS it had been accredited by National Board for Hospitals and Health Care Provider (NABH). It is also not in dispute that certain hospitals were empanelled with CGHS as super-speciality hospital at the time the petitioner took treatment in Medanta Hospital. This is not the case of the respondent that Medanta Hospital did not qualify for empanelment as super-speciality hospital, at the time the petitioner was treated there on 22.7.2011. During the course of arguments, it was not in dispute that even at that time it was a hospital with 300 or more beds with treatment facilities in at least 3 super-specialities mentioned in OM dated 13.9.2010, in addition to Cardiology, Cardiothoracic surgery and Specialized Orthopaedic Treatment facilities including Joint Replacement surgery.

In my view, the only logical interpretation which can be given to clause 10 of the OM dated 17.8.2010 is that if a government servant or a government pensioner holding a CGHS card takes treatment in emergency in a non-empanelled private hospital, he is entitled to reimbursement at the rates prescribed by CGHS for hospitals which are at par with the hospitals in which the treatment is taken. In other words, if a CGHS card holder, in emergency, takes treatment in a non-empanelled private super speciality hospital, he is entitled to reimbursement at the package rates prescribed by CGHS for super-speciality hospital, irrespective of whether that hospital is empanelled with CGHS or not. One needs to keep in mind that treatment at an empanelled super-speciality hospital is available to CGHS card holder even in a non-emergency condition. Clause 10 of the OM dated 17.8.2010 deals only with the cases where a card holder on account of some emergent medical requirement has to go to a non-empanelled hospital. There is

no logical reason for not reimbursing him as per package rates approved by CGHS for its empanelled hospitals if the treatment is taken in a hospital, which is qualified and eligible for being empanelled as a super-speciality hospital though they were not actually empanelled with CGHS. Any other interpretation would result in a situation where CGHS card holder, despite needing immediate medical treatment will either not be able to take treatment in a nearby hospital or he will have to bear the cost of such treatment from his own pocket though he may nor may not be in a position to afford that treatment.

5. It is not in dispute that late Shri V.K. Singh was entitled to be reimbursed for the cost of his indoor treatment in a hospital irrespective of the nature of the ailment. It is not as if he was entitled to reimbursement of the cost incurred on treatment only in respect of CAD. It is quite clear from a perusal of the Discharge Summary dated 18.8.2009 by Max Super Speciality that, in fact, Shri V.K. Singh was suffering from various ailments including CAD and had undergone stent implantation in 2000. Since he had to be rushed to the hospital in emergency, it was not obligatory for his family members to take him to a hospital recognized/ empanelled for treatment of the ailments from which he was suffering. In fact, in emergency neither the patient nor his family members can make out what exactly is the ailment of the patient at that point of time. It is only after he is taken to a hospital, is examined by Doctors and requisite diagnostic procedures are undertaken that the exact nature of the ailment can be identified. It would be unrealistic to expect the patient or the members of his family, to look for an empanelled hospital, even in a case of emergency. The attempt in an emergency condition, therefore, is to take him to a nearby hospital where he can get adequate treatment and his life can be saved. Since late Shri V.K. Singh was residing in Vasant Kunj he was rightly taken to a well-equipped hospital in Saket. In my opinion, if in a case of emergency the patient is taken to a non-empanelled hospital, reimbursement for treatment in such a hospital cannot be refused though it would be open to the reimbursing authority to restrict the amount of reimbursement to the rates fixed by it for the hospitals empanelled by it for the treatment of ailments from which the patient was found to be suffering. If the reimbursing authority has more than more set of rates for such treatment, depending upon the hospital in which the treatment is taken, the reimbursement must necessarily be at the rates which the said authority has approved for treatment at a hospital, of the category of the hospital in which the treatment was taken in emergency. This was also the ratio of the decision of the Court in Jai Pal Aggarwal (supra). For the reasons stated hereinabove the writ petition is allowed with a direction to the respondents to reimburse the petitioner for the treatment by Shri V.K. Singh at Max Super Speciality Hospital at the rates fixed by it for its empanelled hospitals, of the category of Max Super Speciality Hospital. The payment in terms of this order shall be worked out and made to the petitioner within eight (8) weeks from today.

The writ petition stands disposed of. No orders as to costs.

