
(2019) 02 CAT CK 0025

In the Central Administrative Tribunal

Case No : Original Application No. 3789 Of 2016

Roop Chand

APPELLANT

Vs

Chief General Manager BSNL

RESPONDENT

Date of Decision : 05-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0025

Hon'ble Judges : Sh. Pradeep Kumar, J

Bench : Single Bench

Advocate : Rani Chhabra, R.V. Sinha, Amit Sinha

Final Decision : Allowed

Judgement

1. The applicant had joined the Department of Telecom (DOT) as Time Scale Clerk in the year 1967. In due course, he rose to the position of Assistant General Manager and retired as such on 31.12.2008. By this time, the DOT had been bifurcated into Bharat Sanchar Nigam Limited (BSNL) and Mahanagar Telephone Nigam Limited (MTNL) and the applicant happened to work under BSNL.

2. On 02.06.2016, the applicant's wife was seriously sick as she became totally handicapped and bed ridden due to hip fracture while they were at Muzaffarnagar. For treatment of the same, there was neither a BSNL empanelled hospital nor was this treatment available in the Government hospital at Muzaffarnagar. He consulted a renowned doctor at nearby location, by the name Dr. Mukesh Jain who also runs a hospital by the name Vardhman Trauma and Laparoscopy Centre Pvt. Ltd. at Muzaffarnagar. She was diagnosed a case of hip fracture and was advised hip replacement surgery.

Applicant approached the General Manager (GM), Telecom, Distt. Muzaffarnagar on 06.06.2016 seeking permission for the said surgery at this hospital at Muzaffarnagar. This application was forwarded to the office of Chief GM BSNL, Meerut for further necessary action on 10.06.2016. Thereafter, the applicant

continued to pursue the matter, however, there was no response.

3. Applicant's wife was admitted for hip surgery at the said Vardhman Trauma and Laparoscopy Centre Pvt. Ltd., Muzaffarnagar on 26.06.2016 and the surgery was planned for 27.06.2016. The applicant made another request to GM, Muzaffarnagar on 27.06.2016 seeking approval. Still there was no response and the applicant had to deposit Rs.3 lakhs from his own savings for getting this operation done.

4. The bills for this treatment were submitted on 26.07.2016 for reimbursement. It was thereafter that the GM Telecom Distt. Muzaffarnagar vide his letter dated 27.07.2016 advised that approval from CGMT office Meerut has not been received and as such reimbursement is not feasible. This action by the respondents in denial of reimbursement is the grievance ventilated in the instant OA.

5. The applicant brought out that BSNL has issued a policy directives regarding reimbursement of medical claim for retired employees of BSNL. Attention was drawn to para 3 (vi) of the same which reads as under:

"(vi) Retired employee or his dependent may take indoor treatment from non-empanelled hospitals only in cases of emergency. The designated officer in BSNL may be informed as early as possible regarding such treatment being taken in non-empanelled hospitals. However, reimbursement shall be restricted to prevailing CGHS rates only after due verification.'

6. The applicant also relied upon a judgment by Hon'ble Apex Court in Shiva Kant Jha vs. Union of India in Writ Petition (Civil) No. 694/2015. The observations of the Hon'ble Apex Court in this case are reproduced below:-

"13. It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the

present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.

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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 pensioner. In the facts and circumstances of the case, we are of the 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 his case only.'

7. The applicant pleads that the Hon'ble Apex Court has held that it is the factum of treatment which is important and the technicalities like treatment being taken from a non-empanelled hospital, should not come in the way of reimbursement when it is allowed otherwise. Accordingly, reimbursement is required to be granted in terms of policy directives of BSNL quoted in para 5 above.

8. The respondents opposed the OA. It was brought out that as per the BSNL policy directives, following provisions have been kept:

"3. Indoor Treatment:

(i) In normal circumstances, indoor treatment should be taken only from BSNL empanelled hospitals and referral from a Doctor registered in the Allopathic system of medicine is essential.

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(iv) In general, empanelled hospitals shall send the bills to BSNL, as per agreement. However, in some cases, the empanelled hospitals may not extend such facility. In such cases, the payment has to be made by the retired employee to the hospital and such expenditure may be claimed in stipulated from along with all supporting vouchers. Medical advance shall not be given in any case.

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(vi) Retired employee or his dependent may take indoor treatment from non-empanelled hospitals only in cases of emergency. The designated officer in BSNL may be informed as early as possible regarding such treatment being taken in non-empanelled hospitals. However, reimbursement shall be restricted to prevailing CGHS rates only after due verification.

(vii) Emergent cases are those which involve accident, serious nature of disease etc. In such cases only, the person on the spot may use his/her discretion for taking the patient for treatment in a private hospital in case no government or an empanelled hospital is available near than the private hospital. The

administrative office will decide on merit of the case whether it was a case of real emergency necessitating admission in a private hospital.'

9. It was further brought out that the applicant was residing at Muzaffarnagar and at nearby location, namely, Meerut, there is a BSNL approved empanelled hospital by the name Kailashi Super Speciality Hospital where the hip replacement surgery can be performed and the applicant was required to contact this hospital at Meerut and he could have done so, this being located only 55 km. away.

10. In the instant case, it was further brought out that the applicant consulted the hospital at Muzaffarnagar on 02.06.2016 whereas surgery was performed on 27.06.2016. Therefore, the instant case cannot be termed as an emergency but it is a case of planned surgery and for such planned surgeries the policy directives of BSNL do not permit reimbursement, which are permissible for emergency cases only.

11. It was further brought out that the emergency certificate dated 18.12.2018 has been submitted by way of an additional affidavit whereas surgery was performed on 27.06.2016. Accordingly, at such a late stage, this cannot be accepted that there was actually an emergency on 27.06.2016.

12. In view of the foregoing, no reimbursement is admissible and OA is required to be dismissed.

13. Matter has been heard at length. The applicant was represented by Mrs. Rani Chhabra and the respondents were represented by Sh. R.V.Sinha and Sh. Amit Sinha.

14. The case in question is of a senior citizen wherein the applicant's wife had suffered a fracture in the hip which was required to be replaced as per medical advice. He was residing at Muzaffarnagar at that point of time and the difficulties for approaching the hospital at Meerut, which is 55 km. away, under such conditions, can very well be imagined. The applicant had retired from BSNL and accordingly he was a beneficiary of the relevant policy instructions in respect of post retirement health facilities (para 8 supra).

15. It is only natural that they will approach the nearest hospital. In the instant case, the applicant was a resident of Muzaffarnagar at that time and it was only natural to approach the nearest hospital, namely, Vardhman Trauma and Laparoscopy Centre Pvt. Ltd., which he did on 02.06.2016. They were advised hip replacement and in right earnest, the applicant approached the BSNL office at Muzaffarnagar on 06.06.2016 seeking approval. The application was forwarded to the superior officer of BSNL on 10.06.2016. Thereafter, the applicant had approached the BSNL authorities again on 27.06.2016 seeking reimbursement. It was only after the said surgery on 27.06.2016 was already performed, that he was advised on 29.07.2016 that approval has not been granted.

16. The respondents have relied upon factum of the time gap between OPD

consultation on 02.06.2016 and the actual date of operation on 27.06.2016 and pleaded that this is not a case of emergency but that of a planned surgery. While this may be technically true, it cannot be ignored that a case needing hip replacement has to be treated as an emergent condition only. The hospitals always need advance payment and as such, even though it is a planned surgery in that sense, yet it has to be treated under emergent conditions only. Being involved with substantive justice, this Tribunal treats this case as that of an emergency.

17. The judgment of Hon'ble Apex Court in Shiva Kant Jha (supra) has also held that it is the factum of treatment which is important and not the technicality that treatment was undertaken in an empanelled hospital or in a non-empanelled hospital. The applicant being a retired employee is required to be granted the medical facility including reimbursement as is applicable to him.

18. As regards the emergency certificate issued on 18.12.2018, this was insisted by respondents during the course of hearing when respondents had earlier mentioned that no such emergency certificate was submitted. Therefore, pleadings of delay on this account are not sustainable. In any case applicant approached respondents seeking approval before surgery on 06.06.2016 as well as again on 27.06.2016.

19. The BSNL rule, as quoted in para 8 sub para 3 (vi) above, itself lays that under emergent conditions treatment can be taken in a non-empanelled hospital. However, reimbursement will be made at CGHS rates in such cases.

20. In view of the foregoing, OA is allowed. Respondents are directed to reimburse the claim of the applicant at CGHS rates, within a period of eight weeks from the date of receipt of certified copy of this order. No costs.