
(2019) 02 CAT CK 0127

In the Central Administrative Tribunal

Case No : Original Application No. 1045 Of 2018

Sh. Subhash Kishore

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0127

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Advocate : Sh. B.K.Pandey, Harvinder Oberoi

Final Decision : Disposed Off

Judgement

1. The applicant is working as Sub Inspector (Ministerial) [SI (Min.)] UNDER Delhi Police. He is a member of Central Government Health Scheme (CGHS), which is applicable to Delhi Police. The applicant has been suffering from acute liver problem which was finally diagnosed as Decompensate Chronic Liver disease MELD-21. He approached the Institute of Liver and Billiary Sciences (ILBS), New Delhi, which is a super speciality hospital for the liver disease and is an empanelled hospital under CGHS and took the treatment w.e.f. 17.08.2015. During the course of such treatment he was advised by the Institute on 24.02.2016 that he needs a liver transplantation. Live donor could not be arranged and the condition of the applicant was deteriorating day by day.

2. At this stage, applicant was advised by ILBS to contact Kovai Medical Center and Hospital Limited at Coimbatore. This is also a super speciality private hospital for liver disease but is not empanelled under CGHS. It was, however, learnt that transplant can be performed from a dead donor at this hospital with least time delay.

The applicant sought permission on 04.03.2016 to take treatment at this hospital and this permission was granted the same day. The hospital at Coimbatore advised him an expenditure of approximately Rs.25 lakhs for a Cadaver

transplant (from a dead donor). Thereafter, the applicant sought permission for this treatment and for medical advance vide his letter dated 11.03.2016. It was processed the same day and the request was sent by Dy. Commissioner of Police North East to Dy. Commissioner of Police, General Administration in Headquarters office vide note No.5406 dated 11.03.2016. Thereafter, the matter was referred by Police Headquarters to Additional Director, CGHS on 15.03.2016. CGHS has a Standing Technical Committee to consider such requests. The Addl. Director, CGHS vide his letter dated 26.04.2016 advised the following:

"I am directed to refer to your letter mentioned above and to inform that the request was submitted before the Standing Technical Committee for Liver Transplant on 22/04/2016. The Committee found the request for Liver Transplant in r/o Subhash Kishore is justified. Hence, reimbursement may be made as per the terms and condition contained in OM dated 16.01.2013."

3. Since the Standing Committee found the need for liver transplant justified, the Police Headquarters processed the advance as per office memorandum dated 16.01.2013. This OM has the following provision:

"VIII. Ceiling Rate for reimbursement for Liver Transplantation surgery under CGHS/CS(MA) rule.

(a) The package rate for Liver Transplantation surgery involving live liver donor shall be as follows:

Rs. 11,50,000/- (Rupees Eleven lakh fifty thousand only) + pre transplant evaluation of donor and recipient- Rs. 2,50,000/- (Rupees Two lakh fifty thousand only).

(b) The package rate for Liver Transplant surgery involving a deceased donor shall be:

Rs. 11,00,000/- (Rupees Eleven lakh only) This includes, the cost of consumables during the organ retrieval and the cost of preservative solution, etc."

4. This advance of Rs.11 lakhs was sanctioned in two instalments of Rs.8,80,000/- and balance in Rs.2,20,000/-. Thus, a total amount of Rs.11 lakhs has been sanctioned and already paid.

5. The applicant pleads that actually surgery had costed him Rs.27 lakhs and he has requested for full reimbursement as is admissible to CGHS members. He has pleaded that he could not continue treatment at the Institute for Liver and Billiary Sciences, New Delhi in view of non-availability of the donor and it was only on advice of the Institute and only after approval by the concerned authorities that he had approached the hospital at Coimbatore for a cadaver transplant.

6. The applicant further pleads that the issue in respect of medical reimbursement had been drawing the attention at various levels including by the

Apex Court. The Hon"ble Apex Court in Shiva Kant Jha vs. Union of India, WP (C) No.694/2015 had passed a judgment dated 13.04.2018. The Apex Court has held as under:

"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."

The Apex Court had thus ordered for full reimbursement in that case even though treatment was in an non-empanelled hospital.

7. The applicant also relied upon a judgment of Hon"ble High Court of Delhi titled Ram Kumar Kaushik vs. Govt. of NCT of Delhi and ors., WP (C) No.7978/2012 delivered on 04.03.2016. In this case, applicant was a teacher who retired on 31.07.2005 from GNCTD. He suffered two cardiac attacks on 26.06.2010 and 16.08.2010. He obtained membership of Delhi Government Employees Health Scheme (DGEHS) on 09.09.2010 only, i.e. subsequent to these attacks. Medical reimbursement for period prior to his becoming member of DGEHS, was denied. He had approached Hon"ble High Court, wherein several other judgments were quoted by High Court and following directions were passed:

"7. In view of the aforesaid mandate of law, the present writ petition is allowed and a direction is issued to the respondents to reimburse the petitioner's medical expenses/claim on account of his treatment in the hospital, within a period of eight weeks."

8. The applicant further mentioned that in keeping with various representations seeking relaxations for medical reimbursement, over and above normal approved rates, the Government has further liberalised the procedure for medical reimbursement and certain powers have been delegated to permit full reimbursement. These instructions were issued by Ministry of Health and Family Welfare OM dated 15.07.2014. The specific provisions therein are reproduced below:

"Subject: Relaxation of procedures to be followed in considering requests for medical reimbursement claims in respect of CS (MA) beneficiaries.

xxx xxx xxx

(3) All cases involving requests for relaxation of rules for reimbursement of full expenditure will henceforth be referred to the Technical Standing Committee, to be chaired by the DGHS/Spl.DGHS and Specialists of concerned subject as members. Addl. DDG (MG-Section), Dte. GHS shall be member secretary for organizing the meetings of Technical Standing Committee. If Technical Standing

Committee recommends the relaxation of rules for permitting full reimbursement of expenditure incurred by the beneficiary, the full reimbursement may be allowed by the Secretary (Health & Family Welfare) in consultation with IFD. A check list for consideration of requests for reimbursement in excess of the approved rates may include:

xxx xxx xxx

b. The treatment was obtained in a private hospital not empanelled under CS (MA).CGHS under emergency and was admitted for prolonged period for treatment of Head injury, Coma, Septicemia, Multi-organ failure etc."

9. In view of the foregoing, applicant pleads for full reimbursement of Rs.27 lakhs for his treatment. The applicant herein had earlier approached the Hon"ble High Court of Delhi in WP (C) No.711/2018 seeking directions for full reimbursement. This was considered by the Hon"ble High Court and orders were passed on 24.01.2018 with the following directions:

"Petitioner is a Sub-Inspector with Delhi Police, who seeks full reimbursement of his medical expenses.

The jurisdiction to entertain petitioner"s grievance is of the Central Administrative Tribunal as the definition of "service matters" as per Sub-Section 3 (q) of the Administrative Tribunals Act, 1985 includes "any other matter whatsoever". In view thereof, petitioner is relegated to seek relief, as sought in this petition, by invoking the jurisdiction of the Central Administrative Tribunal. With aforesaid observations, this petition and the applications are disposed of."

Accordingly, the matter in instant OA was heard by the Tribunal.

10. The respondents opposed the OA pleading that while they have full sympathy with the applicant, yet the reimbursement is required to be governed as per extant instructions. The instructions dated 16.01.2013 permit only Rs.11 lakhs reimbursement which has already been made. As regards the new circular dated 15.07.2014, the respondents pleaded that it is neither a case of emergency nor was the applicant unconscious or taken to the hospital by others and as such the provisions of OM dated 15.07.2014 are not attracted.

11. Matter has been heard at length. The facts of this case are not in doubt. The applicant was suffering from chronic liver disease and needed liver transplant. In view of non-availability of donor both live as well as dead, the condition of the applicant was deteriorating and as advised by the Institute of Liver and Billiary Sciences, New Delhi, which is an empanelled hospital where he was taking the treatment, he approached the hospital at Coimbatore.

It is admitted that it is not an empanelled hospital but he approached this hospital only after seeking necessary approvals, which were considered and granted. The CGHS Standing Technical Committee had also found his case for liver transplant justified.

While it is true that applicant was neither rushed to a hospital in emergency nor was he unconscious yet it cannot be denied that his condition was very critical as he needed liver transplant to save his life. A transplant operation of this nature has to be always performed in a planned manner only as a donor is also needed to be arranged. As such, the condition of emergency or the patient being unconscious or being taken to hospital by other people, as specified in OM dated 15.07.2014, may not be relevant for patients needing transplantation of organs. The very fact that transplantation is needed, is in itself an emergent condition and purport of OM dated 15.07.2014 needs to be implemented in letter and spirit.

Therefore, the plea of the respondent that the conditions specified in the OM dated 15.07.2014 are not satisfied in instant case, cannot be agreed to. The intent behind issuing directions issued in OM dated 15.07.2014, which in itself were with a view to consider "requests for relaxation of procedures in considering requests for medical reimbursement over and above the approved rates", cannot be an exercise in futility or vacuum.

12. In view of the foregoing, respondent no.2 is directed to make a detailed reference to Secretary (Health and Family Welfare), Ministry of Health and Family Welfare, Govt. of India, who is the designated authority as per OM dated 15.07.2014, within a period of four weeks along with all supporting documents seeking full reimbursement in instant case. Thereafter, Secretary (Health and Family Welfare) shall consider the case of the applicant in terms of OM dated 15.07.2014 and thereafter pass a reasoned and speaking order within a period of three months of receipt of a reference from respondent no.2.

13. The OA is disposed off with these directions. The applicant shall have liberty to approach Tribunal, if some grievance still subsists. There shall be no order as to costs.