

(2019) 07 CAT CK 0068
In the Central Administrative Tribunal
Case No : Original Application No. 532 Of 2018

Shambhu Ram

APPELLANT

Vs

Chief General Manager And Ors

RESPONDENT

Date of Decision : 30-07-2019

Acts Referred:

Citation : (2019) 07 CAT CK 0068

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : Rani Chhabra, Amit Sinha, RV Sinha

Final Decision : Allowed

Judgement

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

"a. quash the Order No.P3/Medical/1/D Medical Permission/29 dated 12.5.2017 and letter No.38 dated 13.11.2017 passed by the Respondents;

b. direct the Respondents to reimburse the amount spent in no-panelled hospital to the Applicant towards his medical bills; and

c. pass such other or further order/s as Your Lordships may deem fit and proper."

2. The facts, which are necessary for adjudication of this case, are that the applicant, while working as a Sr. Telephone Operating Assistant, retired from the respondent - BSNL in the year 2011. It is the case of the applicant that he became unconscious on 15.05.2016 and was admitted to nearest Mimhans Neuro Sciences Hospital, Meerut by his children to save his life and for that, permission was immediately sought by sending fax to the department and simultaneously letter along with the emergency certificate was also submitted to the General Manager - Telecom seeking permission of treatment. But instead of settling his claim for reimbursement, the respondents have passed the impugned Order No.P3/Medical/I/D Medical Permission/29 dated 12.5.2017 whereby his application for getting treatment from non-empanelled Hospital was rejected on

the ground that they have neither received any prior information nor "emergency certificate" for taking the applicant to a non-empanelled hospital. In response to the aforesaid impugned order dated 12.05.2017, the applicant immediately submitted emergency certificate issued by Mimhans Neurology Science Hospital vide his letter dated 22.05.2017. It is alleged that the respondents, without application of mind, have passed the order dated 13.11.2017 in a mechanical manner whereby his case was again rejected which is also contrary to the provisions of the rules framed by BSNL and decisions of the Courts in similar matters.

3. The only objection taken by the respondents in their CA is that as per BSNL MRS Policy, the retired employee is entitled for indoor treatment in case of an emergency. He has to intimate to the Designated Officer of BSNL as early as possible, regarding such treatment being taken in a non empanelled hospital, however reimbursement can be instructed at prevailing CGHS rates after due verification. But in this case, retired employee or his dependent did not inform to the Designated Officer in BSNL about his hospitalization in time, they have informed the Designated Officer after a lapse of about four months after taking treatment in a non empanelled hospital, while there were sufficient number of empanelled hospitals available in Meerut. However, they have stated in response to para 4.7 and 4.8 of the OA that the fax sent by the wife of retired employee was not received in office of Designated Officer and further that no "emergency certificate" was received along with the request for medial reimbursement and due to these reasons, post facto permission was not given for treatment in a non-empanelled hospital and no reimbursement was made.

4. After hearing both the parties, it is clear that the applicant suffered a medical emergency due to which he became unconscious and hence was admitted to the nearest Hospital where he remained unconscious and underwent treatment for about 40 days. The issue about entitlement of reimbursement of medical claims in cases of emergency has been allowed repeatedly by various courts even where a treatment occurred in non empanelled hospitals in emergency situations. The Hon'ble Supreme Court has clearly laid down that the routine rules for medical reimbursement must receive relaxation in case of emergency and prior permission/treatment in non-empanelled hospital cannot be a bar in emergency. The Hon'ble Supreme Court in the case of Shiva Kant Jha Vs. Union of India in Writ Petition No. 694/2015 vide its order dated 13.04.2018, held that CGHS Medical claim cannot be denied merely because treatment was in non-empanelled hospital and observed as under:-

"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.

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."

5. Another pleading made by the counsel for the respondents was that the applicant has not given his details of treatment and they also need the payment records of the same. However, a perusal of Annexure RA-1, RA-2 and RA-3 themselves provide all the details of the treatment taken by the applicant in the aforesaid non empanelled hospital and the discharge summary of the applicant of this OA. Hence, the applicant is directed to submit all his claims in the office of General Manager, Telecom District, Muzaffar Nagar, UP at 11 O'clock on 05.08.2019 and the said respondent shall scrutinize all the bills, claims and records of the applicant and ensure that all office requirements are fulfilled. In case there is any insufficiency of record, the said respondent shall give the

applicant one week's time to furnish the same and thereafter they shall make all the payments, keeping in mind the decision of the Hon'ble Supreme Court in Shiva Kanth Jha's case (supra) within 45 days from finalization of the said claims.

6. With the above directions, the OA is allowed. No order as to costs.