

(2007) 08 DEL CK 0215

In the Delhi High Court

Case No : Writ Petition (C) No. 15956 of 2006

Tarlochan Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 16-08-2007

Acts Referred:

Central Services (Medical Attendance) Rules, 1944 — Rule 3(1), 3(2), 6(1), 6(2)

Citation : (2007) 08 DEL CK 0215

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : J.P. Sengh, for the Appellant; Prashant Varma, for the Respondent

Final Decision : Allowed

Judgement

Hima Kohli, J.—The present writ petition has been filed by the petitioner praying inter alias for issuance of an appropriate writ or directions to the respondent to reimburse the petitioner for full amount paid by him to the Escort Heart Institute (hereinafter referred to as 'the Institute') for a coronary artery by-pass graft surgery conducted on the petitioner, who is a CGHS card holder.

2. The undisputed facts of the case are that the petitioner, a retired Central Government employee, is a Central Government Health Scheme (CGHS) card holder and entitled to all the medical benefits under the CGHS. Vide letter dated 20th December, 1999, the petitioner was granted permission by the respondent No. 2 for undergoing open heart surgery at the Institute, which is a CGHS recognized super specialty hospital and accordingly he was admitted to the Institute on the same day, as a case of coronary artery disease. On 23rd December, 1999, the petitioner underwent Coronary Bypass Graft surgery and he was discharged on 29th December, 1999 after his post operation care was over. During his hospitalization, the petitioner was advised to undergo certain other tests as he was found to be a high risk case, which the petitioner duly underwent. The said tests were in addition to those included in the package deal and the petitioner informed the respondent No. 2. about the same vide his letter

dated 8th February, 2000. The petitioner spent a total amount of Rs. 2,06,800/-, out of which he was reimbursed by the respondents for a sum of Rs. 1,26,200/- (of which Rs. 27,000/- was received by the petitioner and Rs. 99,000/- was paid directly to the Institute), leaving a balance outstanding amount of Rs. 80,600/- which the respondent failed to reimburse. Aggrieved by the aforesaid refusal on the part of the respondents in not reimbursing the petitioner for the total amount spent by him on his treatment, the petitioner has filed the present writ petition.

3. Counsel for the petitioner submitted that the petitioner being a Government servant, is entitled to treatment free of charge at such a Government hospital or near the place where he fell ill, which in the opinion of the authorised medical attendants, provides necessary and suitable treatment. In this regard, he relied on Rules 3(1) and (2) and 6 (1) (a) and 6(2) of the Central Services (Medical Attendant) Rules. He further submitted that the Institute is a duly recognized hospital for specialized treatment for cardiac disease and open heart surgery and is an approved hospital as per the Office Memorandum dated 18th September, 1996 and that once the petitioner was permitted to obtain treatment from the Institute, the respondent cannot deny him actual reimbursement of the treatment.

4. Reference was made on behalf of the petitioner to the Office Memorandum dated 7th September, 2001, issued by the Central Government, which states that recognized hospitals are not to charge more than the package rate from the beneficiary and the beneficiary would have an option of availing specialized treatment at the CGHS recognized hospital of his choice. Reliance has also been placed on various judgments including the following, to state that the petitioner was entitled to full reimbursement of the expenses incurred for treatment in the specialty hospital where the petitioner was referred for specialized treatment after the respondent had accorded permission:

1. K.G. Mahendroo v. Union of India (2001) 1992 DLT 59

2. Shri V.K. Gupta Vs. Union of India (UOI) and Another,

3. V.K. Abbi v. Union of India, being WP(C) No. 6658/2002, decided on 04.04.2003

4. Sqn. Commandar Randeep Kumar Rana Vs. Union of India (UOI),

5. Per contra, counsel for the respondent submitted that the petitioner was duly reimbursed for the expenditure incurred by him for open heart surgery as per the package deal rates and nothing further was payable to him by the respondents, except for Rs. 99,000/- for the package deal plus Rs. 27,200/- for additional items not included in the package deal. He stated that reliance placed by the petitioner on Rule 6(1)(a) of the Central Services (Medical Attendant) Rules is misplaced as the said Rules are not applicable to the Government servants who are governed by the CGHS. It was further submitted that the petitioner availed the treatment on 23rd December, 1999, i.e., before the Circular dated 7th

September, 2001 was issued, and Therefore the Guidelines contained in the said Circular were not applicable to the case of the petitioner. Reliance was also placed on Office Memorandums dated 18th September, 1996 and 11th July, 1997 which stipulate that the expenditure to be reimbursed by the parent department would be restricted to the package deal/rates approved by the Government from time to time and any expenditure in excess of the approved rate/package deal shall have to be borne by the beneficiary. Counsel for the respondent also referred to Office Memorandum dated 13th July, 1999 by which the O.M. dated 18th September, 1996 was revalidated till the next revision of rates.

6. It was also argued on behalf of the respondent that the policy of the respondent with regard to medical reimbursement ought not to be interfered with by the court in view of the judgment rendered by the Supreme Court in the case of State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., It was further contended that in light of the said judgment, there was no illegality in reimbursing the beneficiary at the ceiling/package rate.

7. I have heard the counsels for the parties and also perused the judgments relied upon by them.

8. It is now settled law that right to health is an integral part of the right to life and that it is the duty of the State to bear the expenditure incurred by a Government servant suffering from ailments which require treatment at approved specialty hospitals. Reliance in this regard can be placed on the judgment of the Supreme Court in the case of State of Punjab and others Vs. Mohinder Singh Chawala, etc., , relevant extract of which is reproduced hereinbelow:

Para 4: ...It is now settled law that right to health is integral to right to life. Government has constitutional obligation to provide the health facilities. If the Government servant has suffered an ailment which requires treatment at a specialized approved hospital and on reference whereas the Government servant had 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. The High Court was, Therefore, right in giving direction to reimburse the expenses incurred towards room rent by the respondent during his stay in the hospital as an inpatient.

9. The same line of thought finds expression in a number of judgments rendered on this issue, including the following:

- (i) Narendra Pal Singh v. Union of India and Ors. 1999 III AD (Del) 769.
- (ii) Sqn. Commandar Randeep Kumar Rana Vs. Union of India (UOI),
- (iii) Prithvi Nath Chopra v. Union of India and Anr. 111 (2004) DLT 190.
- (iv) Milap Singh Vs. Union of India (UOI) and Another,
- (v) Keshav Kishore Sharma Vs. Municipal Corp. of Delhi,

(vi) K.S. Mathew v. Union of India and Anr. 122 (2005) DLT 450.

(vii) R.D. Gupta Vs. DDA and Others,

10. Once the respondent itself recommended the treatment to be taken by the petitioner at the Institute, being an approved hospital for specialized treatment, there is no justification for the respondent to deny him full reimbursement on the basis of the charges admittedly incurred by the petitioner over and above the package rate which the respondent had agreed upon with the hospital. The plea of the respondent that the respondent is bound by the terms and conditions laid down in the Office Memorandum dated 18th September, 1996, which was revalidated by the Office Memorandum dated 13th July, 1999, for making reimbursement of charges of by-pass surgery in respect of private recognized hospitals in terms of the said Office Memorandum and that any expenses over and above the approved package rates were to be borne by the petitioner himself, is liable to be turned down as it is the very same private hospital, recognized and duly approved by the Government, which has charged rates over and above the package rates prescribed by the respondent.

11. If the respondent has any reservations with regard to the rate charged by the Institute in question, it is for the respondent to take up the issue with the Institute. Therefore, this plea cannot be taken up by the respondent for turning down the claim of the petitioner for reimbursement in terms of the package duly offered to the petitioner. The respondent is under an obligation to pay such charges as the petitioner has incurred over and above the package rates fixed between the respondent and the concerned Institute in the first instance. However, the respondent is not precluded from recovering the said amounts beyond the rate to be charged by the private recognized hospitals from the Institute itself.

12. For the same reasons, reliance placed by the counsel for the respondent on Office Memorandum dated 11th July, 1997 also cannot be sustained.

13. The petitioner cannot be deprived of his right to the reimbursement of the entire amount paid by him on account of his surgery. Reference made by the respondent to the judgment of the Supreme Court in the case of Ram Lubhaya Bagga (supra) can be of no help in this case as the respondent itself has directed the petitioner to take medical treatment and undergo surgery at a private hospital duly recognized by it. Once package rates to be charged by the private recognized hospitals have been fixed by the respondent there is no reason whatsoever to contend that the difference in the rates prescribed and those charged by the private hospital is to be borne by the Government servant. This is a matter purely between the respondents and the duly recognized private hospital. The respondent cannot be permitted to wash its hands and leave the retired government employee to face the vagaries of the demands made from him over and above the approved package rates.

14. For the reasons stated above, the writ petition is allowed. The respondent is

directed to reimburse the petitioner for the full amount paid by him to the Institute for the coronary artery by-pass graft surgery undergone by him, in terms of the medical reimbursement bill issued by the Institute, after deducting the amount of Rs. 1,26,200/- already released to the petitioner, within a period of four weeks. No order as to costs.