

(2012) 09 AP CK 0081

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12438 of 2000

V. Hanumantha Reddy

APPELLANT

Vs

Assistant Director (Admn.) Directorate General, CRPF, New
Delhi and Others

RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Citation : (2013) 1 ALT 24

Hon'ble Judges : Nooty. Ramamohana Rao, J

Bench : Single Bench

Advocate : A. Chaya Devi and Ms. P. Parimala, for the Appellant; S.S. Varma, Additional SC for Central Government, for the Respondent

Judgement

Nooty. Ramamohana Rao, J.—This writ petition is instituted by a constable of Central Reserved Police Force, seeking for declaring the action of the respondents in not sanctioning medical reimbursement amount of Rs. 1,75,863/- incurred by him while securing treatment at a private hospital for bullet injury sustained by him as bad in law. The petitioner joined the service of the Central Reserved Police Force, henceforth referred to as "force" in the year 1895 (sic. 1995), as a Constable. While he was working at Group Centre, Ranga Reddy, he was permitted to live outside the campus due to non-availability of family accommodation at the group centre, at the relevant point of time. While he was proceeding for lunch on 03.09.1997, from his office to his residence, he sustained a bullet injury on his back from EME Lakeline Firing Range. The bullet exited through his abdomen causing him a grave wound. He was administered first aid at the Group Centre Hospital, Ranga Reddy. Then the Medical Officer referred him to Gandhi Hospital, Secunderabad, for receiving further treatment as the injury was a grave one. The petitioner was thus shifted from the hospital at the Group Centre of the force to Gandhi Hospital where he received treatment from 03.09.1997 to 15.09.1997. Unfortunately, inspite of undergoing a surgery and receiving treatment at the Gandhi Hospital, the condition of the petitioner has deteriorated. Discharge was noticed from the exit wound and on the fourth

operative day, the petitioner developed "fecal fistula" with Haematemesis and Melena. In view of the deterioration of his health condition, the family members of the petitioner requested for arranging treatment at Apollo Hospital, Hyderabad, a leading private hospital of repute. Accordingly, the petitioner has been shifted from the Gandhi Hospital on 15.09.1997 and was admitted to the Apollo Hospital. He remained as an in-patient in the said hospital till 06.10.1997 and was ultimately discharged after stabilizing his condition. During the course of his three weeks of stay at Apollo Hospital, the petitioner, in all, spent a sum of Rs. 1,75,863/- towards medication and other related expenses such as hospitalization and nursing charges. Further, the Chief Medical Officer of the Group Centre of the force Dr. Raju was overseeing all through the condition of the petitioner. Further when the family members of the petitioner solicited a shift to Apollo Hospital, Dr Raju, the Chief Medical Officer of the Force Hospital has himself overseen that the petitioner is shifted in an ambulance of the Force to the Apollo Hospital carefully as his condition at Gandhi Hospital has certainly worsened. The Additional Deputy Inspector General of Police, Group Centre, Ranga Reddy at Hakimpet of the force has ordered for a Court of Enquiry into the incident of bullet injury caused to the petitioner. The Court of Enquiry has found that, though the EME Lakeline firing range is nearly 2 kms away from the campus of the group centre, but nonetheless, because of improper standards maintained relating to the height of the protective wall to be maintained by the EME centre, stray instances of bullet injuries to the passers by are noticed. The Court of Enquiry has found that the petitioner has sustained the bullet injury right in front of the campus while he was on bonafide duty. Then, the Additional DIG, Group Centre passed an order on 20.10.1997 agreeing with the opinion of the Court of Enquiry that, when the petitioner has sustained the bullet injury in front of the campus of the force, Group Centre, he was on bonafide Government duty at 13.20 hrs on 03.09.1997 and hence the injury is attributable to the risk of Government Service. The Additional DIG has also passed an order that the petitioner is entitled for all service benefits as per rules, in the event of the petitioner becoming incapacitated for further service at a later stage, as a consequence of the bullet injury sustained by him on 03.09.1997. The Additional DIG has also noticed that this is the fifth incident of stray bullet injury sustained by CRPF personnel. He opined that these injuries are sustained due to improperly constructed/unsafe firing range of 1 EME Centre. It was also recorded that concerted efforts have been made by the Group Centre of the CRPF by approaching State authorities and army authorities, but they are of no avail. The DIG in his recommendations has noted that, in view of the increased habitation around these unsafe firing ranges, the gravest possible danger to the human lives is increasingly felt. He has also noted that these firing ranges do not conform to the technical requirements as prescribed by the Army Headquarters. Hence, he ordered that the matter should be taken up at the Director General Level with the Defence authorities for totally stopping usage of the unsafe firing ranges by the defence personnel.

2. The petitioner has submitted a detailed representation to the Deputy Director (Administration), Director General, CRPF, New Delhi, on 05.06.1998 pointing out that he happened to spend a huge sum of Rs. 1,75,863/- out of which Rs. 1,44,585/- is reimbursable and the balance amount of Rs. 31,278/- is not reimbursable as per the prevailing medical rules for which he has already submitted a medical reimbursement claim. It was rejected. He, therefore, solicited the reimbursement of the entire amount spent by him and for which purpose he instituted the present writ petition.

3. Heard Ms. A. Chaya Devi and Ms. P. Parimala, learned counsel for the writ petitioner and Sri S.S. Varma, learned Additional Central Government Standing Counsel for the respondents.

4. Learned counsel for the petitioner would urge that, the Government of India, Ministry of Health and Family Welfare, Department of Health, New Delhi, by its notification dated 01.07.1996 passed orders recognizing various private hospitals and diagnostic centers under Central Government Health Scheme for enabling specialized and general purpose treatment and diagnostic procedures and fixed the ceiling rates. Through this notification dated 17.10.1996, it was decided by the Government of India to recognize the hospitals and diagnostic centers mentioned therein for different specialties (treatment/ diagnostic procedures) indicated against each such hospital. Out of 07 hospitals/ nursing homes and 02 diagnostic centers, Apollo Hospital, Hyderabad is one such. The said hospital is recognized for all purposes (general and specialized) including radiotherapy and serology. By virtue of this notification dated 17.10.1996, the Central Government Health Scheme beneficiaries at Hyderabad are entitled to receive treatment/ diagnostic services through the 09 institutions mentioned in the said order. In this view of the matter, receiving treatment at the Apollo Hospital, Hyderabad, cannot be found as receiving treatment from a hospital which has not been recognized by the CGHS. The claim of the petitioner, according to the learned counsel for the petitioner is unjustly denied only on the plea that the Chief Medical Officer of the Hospital at the Group Center of the Force has not made a reference order referring the petitioner to Apollo Hospital, Hyderabad.

5. Per contra, Sri S.S. Varma, learned counsel for the respondents would submit that the respondents have shown utmost sympathy and compassion to the case of the petitioner as soon as he sustained bullet injury at about 13:20 hrs on 03.09.1997. Every help in the form of medi-care has been extended by the group center. The petitioner was immediately given first aid and for better management, he has been referred to the Gandhi Hospital, a referral teaching hospital run by the State Government. Therefore, it is for the Gandhi Hospital to treat and manage the patient and only in the event they make a reference for better management or treatment to some other hospital, perhaps, considerations of a different kind would be required to be shown. The Chief Medical Officer of the Group Center Hospital was in fact advised to stay with the patient during the course of his surgery at Gandhi Hospital. Accordingly, the Chief Medical Officer

was present at the time when the petitioner was undergoing surgery in the Gandhi Hospital. One medical officer or the other including the Chief Medical Officer was regularly visiting the patient and monitoring his health condition. On 15.09.1997, the relatives of the patient, on their own have decided to shift him to the Apollo Hospital for better management and treatment. But the Gandhi Hospital have not made any such reference. The Medical officer of the hospital of the Group Centre never took any such decision on his own to refer the patient to the Apollo Hospital. Since he used an ambulance van to reach the Gandhi Hospital, for looking after the health condition of the petitioner, he felt obliged and extended a helping hand by allowing the petitioner to utilize the same ambulance van of the Group Center for his transportation to the Apollo Hospital from Gandhi Hospital. But, such an act cannot be construed by the petitioner as referring the petitioner to Apollo Hospital by the respondents. The record of the petitioner has been very carefully examined and when the conditions stipulated in Appendix VIII of Civil Services (Medical Attendant Rules) are not fully satisfied, no further assistance in the form of reimbursement could be accorded to the petitioner. In spite of the same, his case was considered by the Central Welfare Fund Organizing Committee and the welfare fund organizers have accorded him financial assistance in a sum of Rs. 25,000/- purely on humanitarian grounds. Any such assistance, according to the learned counsel Sri S.S. Varma cannot be insisted upon. Learned counsel would submit that the Governing Body of the Central Welfare Fund at the Office of the Director General of the Force, after taking into account all relevant factors and circumstances have decided to grant him a sum of Rs. 25,000/- only from the Central Welfare Fund which is maintained from out of subscriptions collected from all the CRPF personnel for their general welfare schemes and hence, a writ as prayed for by the petitioner cannot be issued.

6. Sri S.S. Varma, placing reliance upon the judgment rendered by the Supreme Court in *State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.*, would urge that the petitioner is not entitled for any more reimbursement of hospital charges.

7. A careful study of the above judgment discloses that the Supreme Court examined the validity of the policy decision taken by State of Punjab to reimburse medical expenses incurred by the Government servants at the rates prevailing in AIIMS even though they may have undergone treatment in a private hospital like Escorts Heart Institute. The Supreme Court held that since no State can have unlimited resources to spend, the principle of fixation of rate and scale under the new policy is justified. That, was not the question involved in this case.

8. The entire question in this case boils down as to whether a strong case is made out for grant of reimbursement of medical expenses incurred by the petitioner while undergoing treatment at Apollo Hospital. Central Services (Medical Attendant) Rules, 1944, henceforth referred to as "Rules" were notified on 01.01.1944. These rules apply to all Central Government servants other than

those employed in railway services and those of non-gazetted rank stationed in or passing through Calcutta.

9. Appendix VIII of the Rules dealt with the aspects of reimbursement in relaxation of rules in emergent cases. Paragraph (1) thereof dealt with the procedure for obtaining treatment from private medical institutions in cases of emergency. The decisions taken by the Government of India have been incorporated therein. It is clearly envisaged therein that, in emergent cases involving accidents, serious nature of disease, etcetera, the person/persons on the spot may use their discretion for taking the patient for treatment in a private hospital in case no Government or recognized hospital is available nearer than the private hospital. The Controlling Authority/ Department will decide on the merits of the case whether it was a case of real emergency necessitating admission in a private institution. In case of any doubt, the Controlling Authority/ Department may make a reference to the Director General of Health Services for his opinion. In paragraph 1(2), the subsequent transfer of a patient admitted to private medical institution back to Government or recognized hospital is contemplated, while the payment procedures have been detailed in paragraph 1(3) thereof. In Annexure to the said Appendix VIII, the ceiling limits on various items of treatment where admission is obtained in case of emergency in any private medical institution has been provided. In paragraph 5 thereof, following decision taken by the Government of India, Ministry of Health and Family Welfare, through their office memorandum dated 18.06.1982 has been notified, which is to the following effect:

(5) When treatment had in recognized hospital without following the procedure.- Instances have also been noticed where treatment in emergencies has been obtained in hospitals recognized either under the CS(MA) Rules, 1944, or under the Central Government Health Scheme even though they had not been formally referred by the Authorized Medical Attendant. In such cases, where in emergencies, treatment is obtained in hospitals recognized under the Central Government Health Scheme or under the CS (MA) Rules, 1944, even though the procedure prescribed therefore had not been followed, the reimbursement may be allowed in full in accordance with the rates as approved under the CS(MA) Rules, 1944, or under the Central Government Health Scheme, as may be applicable subject to the extent admissible under the CS(MA) Rules, 1944 and fulfillment of other codal requirements thereunder. The Government employees would, however, not be entitled to reimbursement of any Travelling Allowance/ Daily Allowance for availing of such treatment. This relaxation will, however, not be applicable in respect of treatment obtained in institutions recognized for specialized treatment like Postgraduate Institute of Medical Education and Research, Chandigarh; All India Institute of Medical Sciences, New Delhi; Christian Medical College and Hospital, Vellore, etc.

[G.I., M.H. & F.W., O.M. No. S. 14012/9/75-MC(MS), dated the 18th June, 1982]

(Emphasis is mine)

10. From the above, it clearly becomes evident that, where treatment in emergencies has been obtained in hospitals recognized either under the Civil Services (Medical Attendant) Rules, 1944 or under the Central Government Health Scheme, even though the patient had not been formally referred by the authorized medical attendant and even though the procedure prescribed has not been followed, the reimbursement may be allowed in full in accordance with the rates as approved under CS (MA) Rules, 1944, or under the Central Government Health Scheme as may be applicable, subject to the extent admissible under those rules. This decision of the Ministry of Health and Family Welfare, Government of India, is a very salutary decision, It has been taken to mitigate the hardship that would be encountered by the employees who receive treatment in recognized private medical institutions in cases of emergency without waiting for formal referral order of the competent medical officer or sometimes even without following the procedures prescribed for securing such treatment in private recognized hospitals. It is apt to remember that, in cases of emergency only, admissions/ treatments in private hospitals would be sought for without following the normal procedure. Wherever there is a feasibility to secure a referral order, in all such cases the normal procedure will have to be followed. Medical emergencies/ exigencies being what they are, require immediate attention and decisions. In the instant case, the writ petitioner has been referred by the Group Center Hospital, to Gandhi Hospital a teaching hospital of the Government of Andhra Pradesh. The petitioner has undergone treatment there. But when his condition has worsened there, he needed a greater attention for his injury. The petitioner was declared to be semi-conscious during that period. In such circumstances, the request or decision taken by his immediate attendants/ family members to shift him to a recognized private hospital cannot be described as a non-emergency situation. The emergency to shift him for better treatment to a private recognized hospital where additional infrastructural support is readily available cannot be faulted. In that situation, there could not have been any possible involvement of any medical officer of the hospital of the Force. It is a question of professional etiquette on their part that comes in their way to request the treating doctors at the Gandhi Hospital to make a referral of a patient to a private recognized hospital. In such delicate matters, the medical officers of the hospital of the Force are bound to act very neutral. They could not have taken any initiative as the patient was not under their immediate care and attention. A Governmental institution would not rush to a conclusion to refer one of its patients to a private hospital, unless there are extremely compelling reasons to do so. Therefore, to reject the claim of the writ petitioner only on the ground that there is no formal reference made by the duty doctors or treating doctors of the Gandhi Hospital is not a proper way to deal with his claim. It is nobody's case that the petitioner's condition was not found to be still critical on the day when he has been shifted to the Apollo Hospital at Hyderabad. The attendants of the patients at that stage would only be anxious to save the life of the patient rather than contemplate coolly the procedural requirements and the compliance thereof. In fact, saving the life of the member of the Force would also be the utmost

concern of the Force itself. Therefore, there is any amount of justification behind the insistence of the attendants of the writ petitioner in soliciting the petitioner to be referred to a recognized private hospital for better treatment. Such a decision cannot be dubbed as an arbitrary decision. With the advantage of hindsight, the writ petitioner as well as his attendants could nurture a feeling that referring the petitioner for better treatment to Apollo Hospital in time is the only factor that has saved his life. There appears to be considerable amount of justification in such a view.

11. Above all, Apollo Hospital is a recognized private medical institution both for receiving general as well as specialized treatment, by the time the petitioner suffered the injury, when once the additional DIG of the Force passed an order on 20.10.1997 that the injury sustained by the petitioner as attributable to the risk of Government Service, the treatment received by the petitioner at Apollo Hospital, a recognized private medical institution, even if it was not preceded by a formal referral order of an Authorized Medical Attendant, gets attracted to the decision of the Government of India dated 18.06.1982, quoted supra and hence his claim for full reimbursement deserves consideration.

12. As was already noticed, the rules are notified to secure a proper check of indiscriminate usage of the facilities that are accorded to the civil servants. They are intended to secure a proper usage of the facilities created by the State. Financial discipline is required to be observed by all concerned. The resources of the Government of India are extremely precious and are very limited too. Therefore, a proper and effective use of such scarce resources is what is intended to be attained by the rules. Rules never meant to discredit a genuine and legitimate claim by assigning technicalities for purpose of rejecting it. All procedures are intended to enhance and promote the objectives of statutory schemes and are never intended to frustrate them. I, therefore, have no hesitation to dispose of this writ petition by directing the respondents to forthwith deal with the claim of the writ petitioner and consider the same and pass appropriate orders thereon for reimbursing the hospital expenditure incurred by the petitioner for receiving treatment at Apollo Hospital, in accordance with the medical attendant rules and communicate the decision taken thereon within a maximum period of sixty days from the date of receipt of this order. Writ petition stands disposed of. No costs.