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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6160/2013**

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Date of decision: 21.08.2015

VINAY KUMAR

..... Petitioner

Through: Mr. Chandra Bhan, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Manish Mohan, CGSC

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MS. JUSTICE DEEPA SHARMA (OPEN COURT)

1. The petitioner was working as a Constable (GD) with Border Security Force (BSF) and was posted to 109, Bn., BSF since 11.12.2003. His father Mahender Singh s/o Sh.Suraj Singh has suffered a heart attack and he was taken to Primary Health Centre at Village Dolla, District Baghpat, U.P. on 21.05.2007. He was referred to St. Stephens Hospital on the same day and was brought to St. Stephens Hospital, Delhi where he underwent Coronary Angioplasty (Surgery) and Eluting Stent Category A was implanted. He remained under treatment in the said hospital from 21.05.2007 to 26.05.2007 as indoor patient. The petitioner on 18.08.2007 submitted the medical bills

amounting to Rs.1,94,770/- for reimbursement incurred in the treatment of his father. On 25.08.2007 his claim was rejected on the ground “*shifting the patient from PHC, Dolla to St. Stephens Hospital, Delhi is not justified*”. Thereafter according to the petitioner he had been approaching the officials of the respondents for the reimbursement which was denied to him. Finally on 23.07.2013 he sent a legal notice to the respondents and despite that the medical expenses were not reimbursed to him.

2. The petitioner has sought a direction for reimbursement of the medical expenses with interest @ 18% per annum on the ground that as per Appendix VIII Reimbursement in relaxation of Rules, in emergent cases, the petitioner is entitled for the reimbursement as his father was admitted in hospital on emergent basis due to deteriorating health condition. Reliance is also placed on the findings in the case of *Shri Ram Dhari Singh vs. Delhi Administration and Others* 48 (1992) DLT (SN) 4 DB.

3. The respondents have referred Rule 6 of Central Service (Medical Attendance) Rules, 1944, Government of India’s GI, MH, OM/ No.F-33-4/59-H I dated 18th/29th July, 1960, Govt. of India’s decision No.4 (i) and (ii), and have stated that since the patient was referred to St. Stephens Hospital, New Delhi on his request, in violation of these rules he has no

claim. It is submitted that the patient ought to have referred to the concerned District Hospital. District hospital can only refer a case to a hospital outside the State in case of non-availability of such facility in the District/State. The petitioner was asked to rectify/justify it and re-submit the medical documents. Instead the petitioner had sent the legal notice and before any decision is made on his legal notice, the writ petition has been filed.

4. We have given due consideration to the rival contentions of the parties.

5. It is not in dispute that father of the petitioner had suffered a heart attack on 21.05.2007. The petitioner was posted at 109, Bn., BSF and his father was living in village Dolla, District Baghpat, U.P. at that time. He was taken to Primary Health Centre, Village Dolla, District Baghpat, U.P. which had no medical facilities to deal with the cases of heart attack.

6. In such circumstances, it was the duty of the Incharge of the Primary Health Centre or the doctor who attended the patient to immediately refer to a hospital having facilities to treat a patient of heart attack. It is apparent that the Incharge or the doctor on duty did not immediately take a decision to refer the patient. Rule 4 of Central Service (Medical Attendance) Rules

requires the recommendation by the Chief Administrative Medical Officer of the State, if the treatment is to be undertaken outside the State and of Authorized Medical Attendant and countersigned by Chief Medical Officer if the treatment was to be undertaken outside the district. Now none of these authorities sits or are available at Primary Health Centre. In such a situation the patient is in a quandary. Is he or his attendants are required to run from one place to other to meet the Authorities merely for the purpose of a referral and meanwhile lose the valuable time in such emergent situation. The duty of the incharge/doctor at Primary Health Centre is to contact the concerned authority on telephone (who could best convey the condition of patient) and made a reference accordingly as per instructions. There is nothing on record to show that any such effort was made. The patient has little choice. Allowing precious time to lapse or awaiting for a referral or choose a hospital, are two hard choices. The difficulties, the patient face in emergent conditions has been understood by the government that is why in emergent situations, the Central Service (Medical Attendance) Rules, 1944 provides that the patient even can take his treatment in a private hospital in emergent cases. The relevant rules are quoted as under:

*“APPENDIX –VIII
REIMBURSEMENT IN RELAXATION OF RULES,*

IN EMERGENT CASES

(1) *Procedure for obtaining treatment from private medical institutions in emergent cases.* – The question of streamlining the procedure involved in obtaining treatment in emergent cases has been engaging the attention of the Government of India and as a result of the decision taken in this regard, the Ministry of Finance in their O.M.No. F. 26 (10)-E.V (B)/74, dated the 16th July, 1974 have delegated more financial powers to the Heads of Departments/Ministries to meet the situation. In consultation with the Finance Ministry, the following further decisions have been taken in this regard:-

(1) ***Circumstances to justify treatment in private medical institutions.*** – In emergent case involving accidents, serious nature of disease, etc., 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. If the Controlling Authorities/Departments have any doubt, they may make a reference to the Director-General of Health Services for opinion.

Note 1. – In order to eliminate the confusion regarding distinction between a private hospital and a private nursing home/clinic, the delegated powers are applicable to all medical institutions without making any distinction between a private hospital and a private nursing home/clinic.

Note 2.—It may be reiterated that reimbursement of expenses incurred on treatment obtained in the private clinics/nursing homes of the Authorized Medical Attendants would not be admissible under the above provisions and also in relaxation of the CS (MA) Rules, 1944, even in emergent cases.”

7. The petitioner in this case, however has only chosen an empanelled hospital. Taking recourse to rules in a case like this (where the immediate proper treatment was necessary) and any time spent on seeking endorsements from the concerned authorities, would have resulted in the loss of precious time which could have resulted in loss of life of the patient. From the treatment given to the father of the petitioner which included Coronary Angioplasty (Surgery) and implantation of Eluting Stent Category 'A' it is clearly apparent that the condition of father of the petitioner was precarious and immediate medical treatment was the call of the time.

8. In the light of these facts, this Court hereby directs the respondents to reimburse the amounts to the petitioner to the extent of what is permissible under the rules in such cases within eight weeks.

9. Having regard to the fact that the petitioner's fresh demand of reimbursement was made in 2013, we are of the opinion that the interest payment should be restricted effectively from the date of his second claim, i.e., 23.07.2013. Accordingly, the interest at the rate of 8% per annum shall be paid to the petitioner on the sums due, within eight weeks from today.

10. The writ petition is allowed in the above terms.

DEEPA SHARMA, J

S. RAVINDRA BHAT, J

AUGUST 21, 2015

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