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

\+ W.P.(C).10699/2015

*%* ***Judgment dated 20th November, 2015***

RAKESH KUMAR JAIN ..... Petitioner

Through : Mr. Krishna Kumar, Advocate

versus

UNION OF INDIA & ANR ..... Respondents

Through : Mr. Dev P. Bhardwaj, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MR. JUSTICE V.P. VAISH**

**G.S.SISTANI, J (*ORAL*)**

1. Having been aggrieved by the order passed by the Central Administrative Tribunal(hereinafter referred to for short as 'the Tribunal') dated 19.08.2015, has led to the filing of the present writ petition.
2. Mr.Dev P. Bhardwaj enters appearance for the respondents on an advance copy.
3. We have heard the learned counsel for the parties. The necessary facts to be noticed for disposal of this writ petition are that the petitioner is a retired IRS Officer. Besides being a pensioner, he is also a beneficiary of the Central Government Health Scheme(CGHS). The petitioner was suffering from 'Pan Urethral Stricture' with severe obstruction of voiding and urinary retention. He was rushed to a nearby hospital *i.e.* Fortis Memorial Research Institute, Gurgaon and was admitted on emergency basis. He was operated upon for Urethroplasty (penile cutaneous flap Urethroplasty) on emergency basis on 17.05.2014. The operation was conducted by one Dr. Sanjay Gogoi. The petitioner was discharged from the hospital on 22.05.2014. The petitioner, thereafter submitted a bill for medical reimbursement in the sum of Rs.2,14,527/- on 18.06.2014 to the Additional

Director, CGHS, South Zone along with the Emergency Certificate and all original hospital bills. The petitioner was only reimbursed a sum of Rs.19,550/- on 24.09.2014 on the ground that the petitioner was entitled to the amount as per the CGHS package rates.

4. An OA filed by the petitioner before the Tribunal was rejected. The petitioner had relied upon various judgments in the cases of (i) ***Sharmanand Tyagi*** *v.* ***Union of India***, **[**OA No.310 of 2008], decided on 9.7.2008; (ii) ***Surinder Kaur*** *v.* ***The Chief General Manager, Northern Telecom Region, Bharat Sanchar Nigam Limited and Others***, [OA No.3426 of 2013], decided on 29.1.2015; (iii) ***Jagdish Sindh Chauhan*** *v.* ***The Additional Director***, [First Appeal No.480 of 2011], decided on 16.6.2004; (iv) ***Jerom Kujur*** *v.* ***State of Haryana and Another***, [OA No.515 of 2011], decided on 26.2.2015; (v) ***Daljit Singh*** *v.* ***Govt. of NCT of Delhi and Others***, [W.P. ( C ) No. 16651 of 2006], decided on 10.1.2013; (vi) ***Gurucharan Singh*** *v.* ***Union of India and Others***, [W.P.(C) No. 56 of 2008], decided on 19.1.2010; and (vii) ***Shri V.K.Gupta v. Union of India and Another***, 97(2002) DLT 337 in support of his claim for reimbursement. All the judgments were considered by the Tribunal and the Tribunal found the same to be not applicable as the facts in those cases were different *i.e*. all those cases were emergency cases., V*iz* in ***Jai Narayan Sharma*** v. ***Union of India through Secretary,*** *[OA No.377/2008]* case, the petitioner's wife was admitted in emergency in a private hospital. In ***Jainuddin*** *v.* ***Union of India and Others through the Secretary***, [OA No.2345/07] case, the petitioner's wife while travelling with the petitioner met with an accident. In ***Smt. Gayatri Devi*** *v.* ***Govt. of NCT of Delhi***, [OA No.1430/2011] case, her husband had to undergo capsule endoscope. In ***V.B.Jain*** *v.* ***Chief Executive Officer***, [OA No.2954/2012] case, the applicant's wife was diagnosed as suffering from malignant Cancer.

5. The Tribunal rejected the case of the petitioner on the ground that as per the discharge summery, he was suffering with Obstructive LUTS (Lower Urinary Tract Symptoms) for the past four to five years and urinary retention since one day only. This, according to the Tribunal, was not an emergency. In fact, the Tribunal observes as under:

> "8. In the instant case, the applicant retired from Government service, as Commissioner of Income Tax, in December 2008. He is supposed to have known the provisions of the CGHS. He is fully aware of his entitlements as a pensioner-beneficiary of the CGHS. It has been pointed out by the respondents in their counter reply that 'as per Hospital Discharge Summary, the applicant presented to the Fortis Memorial Research Institute with Obstructive LUTS (Lower Urinary Tract Symptoms) for the past 4 to 5 years and urinary retention since 1 (ONE ) day only. In his rejoinder reply, the applicant has not specifically refuted the said statement made by the respondents in their counter reply, nor has he disputed the contents of the Hospital Discharge Summary, referred to by the respondents. I also find that the said statement made by the respondents stands corroborated by the Discharge Summary filed by the applicant as Annexure P-2 to his O.A. Thus, it is clear that the applicant had been under treatment at Fortis Memorial Research Institute since past 4 to 5 years preceding the date of his undergoing Urethroplasty on 17.5.2014. Therefore, it cannot be said that the treatment in question was obtained by the applicant on 17.5.2014 in emergency. Instead of approaching the concerned CGHS authorities to refer him to undergo Urethroplasty (penile cutaneous flap urethroplasty) at any of the Government Hospitals or private hospitals approved under the CGHS, he himself chose to undergo the said treatment on 17.5.2014 at Fortis Memorial Research Institute which was not approved under the CGHS. In order to make out a case of emergency, he obtained an Emergency Medical Certificate from Fortis Memorial Research Institute and submitted medical claim of Rs.2,14,527/- to the respondents for reimbursement……."

6. We have heard the learned counsel for the parties and examined the medical record which has been annexed along with this writ petition. At

the time of discharge, the hospital issued the following Emergency Medical Certificate to the petitioner:

**"Emergency Medical Certificate**

This is to certify that Mr. rakesh Kumar Jain, 65 yrs/M, UID:750360, suffering from Pan Urethral Stricture was admitted to the hospital with severe obstructive voiding and urinary retention on 15/05/2014 at 2.29 pm. He underwent Urethroplasty (penile cutaneous flap urethroplasty) emergency bases on 17/05/2014, operation was conducted by Dr. Sanjay Gogoi and is being discharged today on indwelling silicone Foley's catheter.

He has been advised to periodically review in the OPD till the catheter removal, planned approximately after 3 weeks from the date of surgery.

Sd/-

Date: 22/5/2014 Dr. Maheshwar Lal"

7. Since the bone of contention is the discharge summery of the petitioner, the relevant portion is being reproduced below:

"…..

- Obstructive LUTS x 4-5 years
- Urinary retention x 1 day

HISTORY OF PRESENT ILLNESS: Patient Mr. Rakesh Kumar Jain, 65 years old male presented to FMRI with Obstructive LUTS for the past 4 to 5 years and urinary retention since 1 day. All the appropriate investigations were done and he was found to have Pan urethral stricture. He is now admitted for complex urethroplasty..."

8. The discharge summery would reveal that the petitioner was admitted to Fortis Memorial Research Institute, Gurgaon on 15.05.2014 at 2:29 p.m. Discharge summery also reveals that he was suffering with urinary retention for one day. The discharge summery would also show that a

Urethroplasty(penile cutaneous flap urethroplasty) was carried out under general anesthesia. It, p*rima facie,* establishes that what led to his emergency admission was his retention of urinary for one day and not for the past four or five years urinary retention. No doubt, the discharge summery reveals that he was suffering from the general treatment for the past four to five years, but it was his immediate medical condition *i.e.* retention of urine for one day which led to his emergency admission and not that he got admitted for an ailment which he was suffering for 4-5 years. In our view, the learned Tribunal has misread the discharge summery of the petitioner which probably gives an impression as problem was four or five years old. There was no reason for the petitioner to have gone to a hospital which was not in the CGHS empanelled list at 2:29 P.M. in the dead of the afternoon in the month of May. Upon careful reading of the discharge summery, we find that although the petitioner was suffering from this problem, but he had to be admitted in an emergency as the urinary retention for over one day. Thus, in our view, all the judgments referred to by the Tribunal would, in fact, be applicable to the petitioner as well.

9. In the case of ***Vasu Dev Bhanot*** *v.* ***Union of India & Ors.***, reported at 2008(4) SLR 114, it was held by the Hon'ble High Court of Punjab & Haryana, as under:

> "*It is settled law that right to health is an integral to right to life. Government has constitutional obligation to provide the health facilities. If the Government servant or his dependant has suffered an ailment which requires emergency treatment, it is but the duty of the State to bear the expenditure incurred by the Government servant. Expenditure thus incurred by the Government servant, while in service or after retirement, requires to be reimbursed by the State to the employee.*"

10. In ***Smt. Gouri Sengupta*** *v.* ***State of Assam***, reported at 2000(1) ATJ 582, the Hon'ble High Court at Gauhati held that denial of reimbursement of medical expenses on the ground the petitioner got the treatment in a private nursing home which is not recognized by the Government is not justified.
11. Counsel for the parties have reiterated before us today the stand taken in the pleadings before the Tribunal. The petitioner's counsel placed reliance on the decision in ***P.N. Chopra*** *v.* ***Union of India***, III (2004) DLT 190 in support of the submission that full reimbursement for undisputed medical treatment has to be given. He also submitted that denial of the relief would tantamount to violation of right to life.
12. In the light of the facts of this case, where the petitioner had to approach to a hospital in the dead of the afternoon in the month of May, 2014 at 2:29 P.M. would, by itself, reasonably show that it was an emergency medical condition which is duly supported by the Emergency Certificate issued by the hospital. We have no reason to disbelieve the Medical Certificate issued by the hospital.
13. Consequently, the order of the Tribunal is set aside with a direction to the respondents to clear the balance amount of the medical bills of the petitioner within six weeks.
14. The writ petition is allowed in above terms.

**G.S.SISTANI, J**

**V.P. VAISH, J,**

**NOVEMBER 20, 2015**
pst