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

Date of Decision:-22.12.2021

+ W.P.(C) 10405/2021 & CM APPL. 43001/2021 (directions)

P.D.GUPTA Petitioner

Through Mr. G. C. Chawla, Adv.

versus

GOVT. OF NCT OF DELHI & ANR. Respondents

Through Mr. Sameer Vashisht, ASC with
Mr. Manashwy Jha, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The petitioner, a retired Judicial Officer of the Delhi Judicial Service and a member of the Delhi Government Employees Health Scheme (*hereinafter* referred as DGEHS) has approached this Court assailing the order dated 01.03.2021 passed by respondent no.1, rejecting his claim for reimbursement of a sum of Rs.4,27,276/- towards the amounts spent by him for treatment of his wife Smt. Raj Bala Gupta, who being his dependent is also entitled to the benefits under the DGEHS.
2. Learned counsel for the petitioner submits that on 11.03.2020, the petitioner's wife Smt. Raj Bala Gupta was, pursuant to a biopsy conducted at Medanta, the Medicity Hospital, Gurugram, diagnosed as suffering from Cholangio Carcinoma, a rare type of cancer which

cannot be operated upon. After a series of consultations with the doctors, the petitioner's wife was advised to undergo proton therapy at Apollo hospital, Chennai. However, since permission for undergoing proton therapy at Chennai was being delayed, the petitioner was compelled to approach this Court by way of W.P.(C) 2962/2020 seeking directions to the respondent no.1 to grant permission to his wife for taking treatment at Apollo Hospital, Chennai. The petitioner also sought special permission for his wife to travel to Chennai through air ambulance along with an attendant in case of extreme medical emergency. He contends that even though the respondents had conveyed their no objection for the petitioner's wife to undergo the said treatment due to medical emergency as also for her transportation through air ambulance, the said permission could not be availed on account of rapid increase in the Covid-19 cases at that stage.

3. In September 2020, the condition of petitioner's wife started deteriorating and upon being diagnosed with obstructive jaundice, she was in a state of emergency, required to be admitted in Medanta Hospital, Gurugram on 17.09.2020. She was discharged on 23.09.2020 when a bill of Rs.4,27,276/- was raised on her, which amount was paid by the petitioner from his limited savings. The petitioner then submitted his claim for reimbursement which was duly forwarded to respondent no.1 by the respondent no.2/the District Sessions Judge, Tis Hazari (HQ). The same has, however, been erroneously rejected by respondent no.1 under the impugned order without assigning any reasons by merely stating that the hospital

where the petitioner's wife took treatment was not an empanelled hospital under the DGEHS scheme of which the petitioner is a member.

4. Learned counsel for the petitioner submits that while rejecting the petitioner's claim, the respondent no.1 has ignored its own office memorandum dated 28.07.2010 which was issued on the basis of a Cabinet decision that the beneficiaries under the DGEHS scheme would also be entitled to avail medical treatment in Central Government Health Scheme (*hereinafter* referred as CGHS) empanelled hospitals outside Delhi. He submits that once it is admitted position that the Medanta Hospital, where the petitioner's wife had taken treatment is empanelled under the CGHS, the respondent no.1 could not have rejected the petitioner's claim.
5. On the other hand, Mr. Sameer Vashisht learned counsel for the respondent, while defending the impugned order contends that once the hospital where the petitioner's wife has taken treatment is not empanelled under the DGEHS, the respondent cannot be faulted for not accepting the petitioner's claim for reimbursement. He submits that even though Medanta Hospital Gurugram is empanelled under the CGHS, the fact remains that the petitioner is a member of the DGEHS and not that of CGHS and therefore, cannot seek reimbursement for the expenses incurred at the Medanta Hospital. Mr.Vashisht is however not in a position to justify as to why, while passing the impugned order, the effect of the OM dated 28.07.2010 which in certain situations permits treatment at a hospital outside Delhi

empanelled under the CGHS, was not considered by the respondent no.1.

6. Before dealing with the rival submissions of the parties it may be appropriate to refer to the office memorandum dated. 28.07.2010 which is reproduced herein below-

"Consequent to review and rationalization of different provisions and procedures of the Delhi Government Employees Health Scheme, the following provisions/medications in the Delhi Government Employees Health Scheme are notified for better implementation of the Scheme. This is regarding Delhi Govt. Employees Health Scheme Govt. of Delhi has approved following provisions for serving employees /offices/ pensioners, sitting MLA as well as Ex.MLA of Delhi Legislative. The cabinet also decided that the monthly subscription would be at par with the rates followed under the Central Government Health Scheme. Cabinet further decided that hospital empanelled under CGHS would be allowed for treatment outside Delhi. The subscription of DGEHS beneficiaries has been revised on the pattern of CGHS.

Adoption of CS (MA)/CGHS provisions under DGEHS: *It is decided that all CS (MA)/CGHS provisions be automatically adopted under DGEHS provision including prevailing CGHS ceilings rates for procedure and implants including ISM treatment rates. In case of cancer treatment in private recognized hospitals, where there are no rates for cancer surgery /treatment applicable, nor major hospitals agreeing to CGHS rates, the provisions as applicable under CGHS/CSMA rules may be followed and for expeditious and smooth implementation Director Health Services is authorized to implement any such technical provisions."*

7. A perusal of this office memorandum shows that the same envisages a situation where treatment can be taken by a beneficiary under the DGEHS, in a hospital outside Delhi provided the said hospital is empanelled with the CGHS. Even though, the impugned order does not provide any reasons for rejecting the petitioner's claim, the respondent no.1 has sought to defend its action on the ground that there is no provision for taking OPD treatment in a non-empanelled hospital under the DGEHS. In my view this explanation runs in the teeth of the specific provisions of the OM which undoubtedly meant to cater to a situation where a beneficiary under the DGEHS can be permitted to take treatment in a hospital outside Delhi provided it is empanelled with the CGHS. The said provision being a welfare provision has to be given its full effect and the respondent no.1 could not simply reject the petitioner's claim on the ground that the Medanta Hospital, Gurugram is not empanelled under the DGEHS. It is also evident that while dealing with the petitioner's claim, the respondent has also overlooked the fact that the petitioner's wife was compelled to take treatment at Medanta Hospital only in a state of medical emergency as despite the orders passed by this Court in W.P.(C) 2962/2020, she was unable to travel to Apollo Hospital Chennai for proton therapy. In light of the aforesaid, once it is evident that the petitioner's wife had taken treatment at a hospital outside Delhi which is empanelled with the CGHS and that too in a state of medical emergency which course of action is clearly envisaged under the OM dated 28.07.2010, the respondent's decision to reject the

petitioner's claim is clearly arbitrary and illegal and is liable to be set aside.

8. The writ petition is therefore allowed by setting aside the impugned order dated 01.03.2021. The respondent no.1 is directed to forthwith release the amount of Rs 4,27,276/- to the petitioner within a period of two weeks from today. The said release would however be subject to the verification of the bills submitted by the petitioner as per the laid down procedure.
9. Before I conclude I must express my anguish in the manner in which the respondent has proceeded to reject the petitioner's claim by a wholly cryptic and non-speaking order and that too without even considering the effect of its own office memorandum. A little more sensitivity is expected from the respondent when they are dealing with claims for reimbursement of medical expenses of senior citizens who are their own retired employees.

(REKHA PALLI)
JUDGE

DECEMBER 22, 2021
ms/sr/kk