



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

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Date of Decision: September 06, 2023

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+ **W.P.(C) 8280/2023, CM APPL. 31826/2023**

UNION OF INDIA AND ORS.

..... Petitioners

Through: Mr. Manish Mohan, CGSC with
Mr. Jatin Teotia, Advocate.

versus

SURENDRA KUMAR GAUR

..... Respondent

Through: Mr. Gaya Prasad, Advocate.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO (Oral)

1. The challenge in this Writ Petition is to an order dated March 07, 2023, passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal' for short) in O.A. No. 689/2019, whereby the Tribunal has allowed the O.A. filed by the respondent by stating in paragraph 17 and 18 as under:

“17. Therefore, the present Original Application is allowed with a direction to the respondents that the claim of the applicant in terms of the actual expenditure incurred by him be sanctioned forthwith and the balance amount, which works out to Rs.35,559/- be released in his favour, as expeditiously as possible in no case later than four weeks from the date of receipt of a certified copy of this order.

18. I am consciously not passing any direction with respect to the applicant's claim for interest as I cannot



hold the respondents responsible of any deliberate act while restricting the claim; they deserve the benefit of doubt that they may have been interpreting the extant rules and instructions as per their own understanding. No order as to costs.”

2. The challenge of the respondent before the Tribunal was to an order dated October 17, 2018, by which his claim for reimbursement of the amount incurred by him on medical treatment of his wife has been rejected. The wife of the respondent was suffering from Chronic Liver Disease (CLD), which is said to be life threatening. On September 09, 2012, she suffered serious medical complications and in a state of panic and emergency, she was rushed to a nearby private hospital called Ayushman Hospital, situated in Dwarka, New Delhi.
3. After the examination of the wife of the respondent, she was treated in the said hospital and thereafter discharged on September 14, 2012. The respondent incurred expenditure of Rs. 95,118/- on the treatment of his wife in the above hospital. When he sought reimbursement of the expenditure incurred, the claim was restricted to Rs. 59,559/- only on the ground that the admissibility of the reimbursement was governed by the rates applicable in the Central Government Health Scheme (CGHS).
4. Aggrieved by the same, the respondent approached the Tribunal in O.A. No. 3400/2008, which was decided on September 17, 2018, with a direction to the authorities to decide the representation of the respondent in accordance with the rules.
5. The impugned order before the Tribunal was the decision on the representation made by the respondent. Suffice to state, the representation



was rejected.

6. The Tribunal has relied upon the judgment of the Supreme Court in the case of *Shiva Kant Jha vs. Union of India, WP (C) No. 694/2015*.

7. The case of the respondent before the Tribunal was that the judgment of *Shiva Kant Jha (supra)* is clearly applicable to the facts of his case, inasmuch as in paragraph 4.22 thereof, the court has held that the authority should not decide the reimbursement claims in a mechanical manner. Essentially being a welfare measure, the issue of emergency and concern for saving the life of the person should be paramount in considering the claim.

8. The case of the respondent was also that once the genuineness of the treatment is established, there is no ground to restrict the reimbursement.

9. On the other hand, the case of the petitioners before the Tribunal was by relying upon a circular dated January 31, 2007, on the subject reimbursement of medical expenses to contend that the circular provides that in case treatment is taken in a non-recognized hospital, reimbursement shall be made at CGHS rates of that city.

10. According to the petitioners, as the treatment was in a non-recognized hospital, hence the claim was restricted in the manner depicted above.

11. We have already reproduced the final directions given by the Tribunal. The Tribunal while giving the directions has relied upon certain judgments in paragraph 10 of the impugned order.

12. On the last date of hearing, it was put to Mr. Manish Mohan, learned counsel appearing for the petitioners, whether there was no emergency for



the wife of the respondent to be rushed to the hospital, wherein she had undertaken the treatment, Mr. Manish Mohan has fairly drawn our attention to page 76 of the paper-book, which is an Emergency Certificate issued by Authorized Railway Medical Officer on October 01, 2012. That apart we note that the Discharge Summary dated September 14, 2012, which read as under, also depict the emergency situation for which the wife of the respondent was admitted in the hospital at Dwarka.

Emergency Certificate

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This is to certify that Smt/Sh/Km. SUNITA GAUR
 Son/Wife/Daughter of Smt./Sh. SURENDRA KUMAR GAUR Designation
CTT Station MOLC was admitted/took treatment

w.e.f. 09.09.2012 to 14.09.2012 in AYUSH MAN Hospital non-
 recognized hospital in emergency which has been verified by undersigned. I have
 carefully gone through the hospital documents/records related to treatment/

admission/discharge of the patient in the non-recognised hospital.

*MC 10. DMCLD EMTN E aerophagical varises
 grade IV E varicose bleed. It was not attend
 for the last 7 yrs*

Based on these documents and in the light of Railway Board's policy
 letter no. 2005/H/6-4/policy-II dated 31.01.2007, emergency for treatment/
 admission of Smt./Sh. SUNITA GAUR in AYUSH MAN
 hospital is considered justified.

Date: 01.10.2012
 Place: S. P. MARE

(Signature of Authorized Railway Medical Officer)
 Name and Designation in block letters
 (Seal and Stamp of issuing officer)

Signature of MD/CMS
 (Name with seal and stamp)



13. If that be so, it necessarily follows that the treatment undertaken by the wife of the respondent was under emergency situation and as such, the case of the respondent is covered by the judgment of the Supreme Court in **Shiva Kant Jha**, of which a reference has been made above. The relevant paragraphs thereof are reproduced as under:

13. It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.

14) This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the central government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force. In the facts of the present case, it cannot be denied that the



writ petitioner was admitted in the above said hospitals in emergency conditions. Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. The doctors did his operation and had implanted CRT-D device and have done so as one essential and timely. Though it is the claim of the respondent-State that the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS rates and that too after following a proper procedure given in the Circulars issued on time to time by the concerned Ministry, it also cannot be denied that the petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals.

15) In the present view of the matter, we are of the considered opinion that the CGHS is responsible for taking care of healthcare needs and well being of the central government employees and pensioners. In the facts and circumstances of the case, we are of opinion that the treatment of the petitioner in non-empanelled hospital was genuine because there was no option left with him at the relevant time. We, therefore, direct the respondent-State to pay the balance amount of Rs. 4,99,555/- to the writ petitioner. We also make it clear that the said decision is confined to this case only.

14. We are of the view that present petition is without any merit and is liable to be dismissed. It is ordered accordingly.

15. Suffice to state, we have passed this order in the facts of this case.

16. The next date of hearing, i.e. November 23, 2023 stands cancelled.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

SEPTEMBER 06, 2023/R